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99TH CONGRESS
2d Session

SENATE

REPORT
99-436

FEDERAL COAL LEASING AND UTILIZATION ACT OF 1986

SEPTEMBER 10 (legislative day, SEPTEMBER 8), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 2427]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2427) to amend the Mineral Leasing Act of 1920 to improve the administration of the Federal Coal Leasing Program, and for other purposes, having considered the same, reports favorably thereon with amendments to the text and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Page 2, lines 9–10, delete "lease or leases under the terms of section 2(a) of the Mineral Lands Leasing Act, nor may he permit the" and insert in lieu thereof "lease or competitive coal leases under the terms of this Act, nor may he consent to the".

2. Page 2, line 17, delete "section 7(c)" and insert in lieu thereof "sections 7(a) and 7(c)".

3. Page 2, lines 19–20, delete "making diligent development advance royalty payments pursuant to section 7(b) of this Act." and insert in lieu thereof "not complying with the requirements of diligent development set forth in section 7(b) of this Act.".

4. Page 2, line 25, after "relinquish" and before "and" insert a comma ",".

5. Page 3, line 1, after "of" and before "a" insert a comma ",".

6. Page 3, line 6, strike "the" and insert in lieu thereof "three times the estimated".

7. Page 3, lines 13–17, revise subparagraph (iv) to read as follows:

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(iv) The prohibition in subparagraph (A)(i) shall not apply to any entity holding a noncompliance lease or leases which has agreed within six months from the date of enactment of the Federal Coal Leasing and Utilization Act of 1986 or from the date on which each such noncompliance lease became a noncompliance lease, whichever is later, to pay an additional annual rental on each such noncompliance lease, on which substantial investment has not been made, of one-half (0.5) cent per ton of recoverable coal reserves. The prohibition shall also not apply if, prior to either submitting a bid for a competitive coal lease or acquiring such a lease by assignment, such entity agrees to pay an additional annual rental of one cent per ton of recoverable coal reserves on all coal noncompliance leases, on which substantial investment has not been made, held by such entity. Payments under this subparagraph shall be made retroactive to the enactment of the Federal Coal Leasing and Utilization Act of 1986 or the date on which each lease held by such entity became a noncompliance lease, whichever is later.

8. Page 3, after line 17, insert a new paragraph (v) as follows:

(v) Notwithstanding fulfillment of the conditions set forth in subparagraphs (A)(ii), (A)(iii), or (A)(iv), an entity otherwise subject to the prohibition in subparagraph (A)(i) shall be subject to such prohibition if the entity holds any noncompliance lease or leases not readjusted after the date of enactment of the Federal Coal Leasing Amendments Act of 1976, unless such entity agrees within sixty days after the date on which the entity becomes ineligible to receive new coal leases by reason of the prohibition contained in section 2(a)(2)(A)(i) of this Act that such noncompliance lease or leases be readjusted immediately by operation of law.

9. Page 3, line 18, delete "(v)" and insert in lieu thereof "(vi)".

10. Page 4, lines 1–2, delete "(a)(1)", and delete "Regulations." and insert in lieu thereof "Regulations as in effect on May 13, 1986.".

11. Page 4, line 3, delete "(vi)" and insert in lieu thereof "(vii)".

12. Page 4, line 7, delete "(vii)" and insert in lieu thereof "(viii)".

13. Page 4, lines 10–13, delete "disturbance pursuant to a permit issued under section 506 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1256)." and insert in lieu thereof "disturbance.".

14. Page 4, after line 13, insert the following:

(ix) Any entity holding a lease or leases issued prior to August 4, 1976, by the United States to coal deposits shall not be subject to the prohibition in subparagraph (A)(i) due to holding such lease where the Secretary determines that all recoverable reserves in such lease have been mined out and the lessee holds such lease solely for the purposes of complying with the applicable requirements relating to

reclamation set forth in such lease or in State or Federal law.

15. Page 4, line 14, delete "(a)".

16. Page 4, line 24 thru page 5, line 1, delete "in addition to information excluded from disclosure by the Freedom of Information Act,".

17. Page 5, after line 20, insert the following:

(c) Section 2(d)(7) of the Mineral Lands Leasing Act is amended by striking out "the total acreage (both Federal and non-Federal)" and inserting in lieu thereof "the total Federal acreage".

18. Page 5, line 23, delete "SEC. 7(a)" and insert in lieu thereof:

GENERAL PROVISIONS

SEC. 7. (a) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, as provided for in subsections 7(b) and 7(c) of this Act, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the leasee or where the Secretary determines that all recoverable reserves in such lease have been mined out and the lessee holds such lease solely for the purposes of complying with the applicable requirements relating to reclamation set forth in such lease or in State or Federal law.

19. Page 6, delete "operations." and insert in lieu thereof "operations: or from special bituminous coal mines which meet the requirements of section 527(a) (1) to (4) or section 527(b) of Public Law 95–87 (91 Stat. 445, 513–514).".

20. Page 6, line 7, delete "may require." and insert in lieu thereof "shall determine.".

21. Page 6, lines 19–20, delete "operations, except as provided in section 39 of this Act." and insert in lieu thereof "operations or in the case of special bituminous coal mines which meet the requirements of section 527(a) (1) to (4) or section 527(b) of Public Law 95–87 (91 Stat. 445, 513–514).".

22. Page 6, at the end of line 20, insert the following new sentence:

In the case of a lease issued before August 4, 1976, for that portion of the lease from which income is derived from a supply agreement with any nonprofit rural electric cooperative association, royalty or rental adjustments (if any) for each readjustment period shall be made on a reasonable basis and upon a complete evaluation of the facts and circumstances involved in each individual lease; such factors shall include, but are not limited to, the impact of any proposed increases upon wholesale electric rates of the affected nonprofit rural electric cooperative, the nature of the supply agreement with such cooperative, mining costs and other competitive and marketability factors, the rela-

tionship of the increases to historical royalties and rentals, and other relevent facts and circumstances.

23. Page 6, after line 20, insert "DILIGENT DEVELOPMENT".

24. Page 6, line 25, delete "the payment" and insert in lieu thereof "the annual payment".

25. Page 7, line 2, delete "assumed production" and insert in lieu thereof "assumed annual production".

26. Page 7, line 8, delete "year through the payment" and insert in lieu thereof "year, but not beyond the twentieth year, through the annual payment".

27. Page 7, line 10, delete "assumed production" and insert in lieu thereof "assumed annual production".

28. Page 7, line 12, delete "(3) Payment by a lessee of advance royalties under subsection (b) of this section shall constitute compliance with section 2(a)(2)(A) of this Act with respect to such lease.".

29. Page 7, line 15, delete "(4)" and insert in lieu thereof "(3)".

30. Page 8, prior to line 1, insert "CONTINUED OPERATION".

31. Page 8, line 1, delete "Each lease shall be subject to the condition of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee".

32. Page 8, line 7, after "payment of", insert "continued operation".

Page 8, line 8, after the word "Such", insert "continued operation".

33. Page 8, line 12, after the word "which", insert "continued operation".

34. Page 8, line 15, delete "to suspend the condition of continued operation".

35. Page 8, line 17, after the word "any", insert "continued operation".

Page 8, line 18, after the word "such", insert "continued operation".

Page 8, line 19, after the word "No", insert "continued operation".

Page 8, line 23, after the word "accept", insert "continued operation".

36. Page 9, prior to line 1, insert "OPERATION AND RECLAMATION PLAN".

37. Page 9, prior to line 9, insert "DEFINITIONS".

Page 9, line 9, strike "SEC. 105." and insert "(e)".

Page 9, line 9, after the word "of" insert "the provisions relating to leasing of deposits of coal under".

Page 9, line 10, strike "(1) 'commercial quantities' " and insert " '(1) "commercial quantities".

Page 9, line 13, strike "(2) 'diligent development' " and insert " '(2) "diligent development".

Page 9, line 15, strike "(3) 'continued operation' " and insert " '(3) "continued operation".

Page 9, line 23, strike "(4) 'substantial investment' " and insert " '(4) "substantial investment".

38. Page 9, line 17, delete "year," and insert in lieu thereof "of the first two years".

39. Page 9, line 25, delete "reserves." and insert in lieu thereof "reserves for exploration or planning under the lease or for development and construction of operating facilities in the mine plan area for mining on the lease, or any combination of the foregoing, together with submission of an application for approval of a permit to mine, issued pursuant to section 506 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1256), containing information addressing each application requirement of the applicable regulatory program administered pursuant to the Surface Mining Control and Reclamation Act of 1977 and containing all information necessary to initiate processing and public review.".

40. Page 10, line 1, delete "SEC. 106." and insert in lieu thereof "SEC. 105.".

41. Page 10, line 8, delete "1986" and insert in lieu thereof "1986, and shall report the Comptroller General's findings with respect to these activities in a semiannual report to the Congress beginning six months after the date of enactment of the Federal Coal Leasing and Utilization Act of 1986.".

42. Page 10, line 9, delete "SEC. 107.", and insert in lieu thereof "SEC. 106.".

43. Page 10, line 15, delete the word "assignment."

44. Page 10, line 23, delete the word "April" and insert in lieu thereof "August".

45. Page 11, line 2, delete "assignment." and insert in lieu thereof "assignment. After the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, the Secretary shall not issue or authorize the assignment of a competitive coal lease or leases under the terms of this Act to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, which holds any coal lease issued by the United States prior to August 4, 1976, and which the entity acquired by assignment after the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, when such entity is not, except as provided in section 7(a) and 7(c) of this Act, producing coal in commercial quantities from such lease, or is not complying with the requirements of diligent development set forth in section 7(b) of this Act, or is not fulfilling the conditions set forth in subparagraphs (ii), (iii), (iv), (v), or (ix) of section 2(a)(2)(A) of this Act.".

46. Page 11, after line 2, insert:

> SEC. 107. In determining the amount of payments to States under section 35 of the Mineral Lands Leasing Act, the amount of such payments shall not be reduced by any administrative costs incurred by the United States.

47. Page 11, beginning on line 3 thru page 12, line 18, delete Section 108 in its entirety.

48. Page 12, beginning on line 19, revise section 109 to read as follows:

SEC. 108. Section 2(a)(1) of the Mineral Lands Leasing Act is redesignated as section 2(a)(1)(A) and the following paragraph (B) is added at the end thereof:

"(B) No lessee holding a coal lease which was eligible for readjustment after August 4, 1976 and prior to the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, which was not readjusted to include the provisions of section 7 of this Act as in effect prior to the enactment of the Federal Coal Leasing and Utilization Act of 1986, may be issued a coal lease or acquire a coal lease by assignment unless all coal leases which the lessee holds and which were eligible for readjustment and which were not readjusted are readjusted in accordance with the provisions of this Act, as amended by the Federal Coal Leasing and Utilization Act of 1986, prior to the date of issuance or assignment of the coal lease."

49. Page 13, after line 4, insert the following new section:

SEC. 109. Section 2(a) of the Mineral Lands Leasing Act is amended by adding a new paragraph (5) as follows:

"(5) The Secretary shall not issue a competitive coal lease of leases under the terms of this section to any person, association, or corporation that is a subsidiary of, affiliated with, or controlled by our under common control with a person, association, or corporation engaged in the extraction or production of coal reserves in a foreign country, and the importation of such reserves into the United States."

50. Page 13, beginning on line 5, delete Title II in its entirety.

PURPOSE OF MEASURE

S. 2427, amended as recommended by the Committee, would amend the Mineral Lands Leasing Act of 1920 by:

(1) limiting the prohibition on the acquisition of new mineral leases (which currently includes oil and gas) by companies who hold and have held a Federal coal lease for 10 years without producing coal in commercial quantities to competitive coal leases only;

(2) providing that the prohibition would not apply if the lessee turns back noncompliance leases containing three times the recoverable reserves in the new leases to be acquired, makes a substantial investment in the lease, pays an additional annual rental, or holds the lease solely for purposes of reclamation;

(3) providing that the prohibition cannot be avoided through assignments;

(4) providing for automatic lease readjustment to bring old leases under the diligence requirements of section 7 if a lessee uses one of the options to avoid the prohibition;

(5) eliminating the limit on non-Federal acreage in a logical mining unit (LMU) and modifying the requirements for an LMU;

(6) protecting against disclosure by Federal employees of presale data on leases;

(7) allowing lessees to continue to hold leases beyond the section 7 10-year diligent development deadline up to the end of the 20-year lease term through substantial investment and/or payment of advance royalties;

(8) clarifying existing law that upon readjustment, royalties are to be readjusted automatically by operation of law to a rate of not less than 12.5 percent of the value of surface-mined coal and to a rate of not less than 8 percent in the case of coal recovered by underground mining;

(9) modifying the requirements for readjusting royalties for leases for mines meeting certain requirements relating to special bituminous coal mines and for certain leases supplying nonprofit rural electric cooperative associations;

(10) restating current law that the Federal Government will not deduct administrative costs prior to making payments to the States;

(11) prohibiting the acquisition of new leases by lessees holding Federal coal leases for which readjustment was waived after August 4, 1976, unless existing leases are readjusted;

(12) prohibiting any entity which extracts or produces and imports foreign coal into the United States from obtaining a Federal coal lease.

Background and Need

After enactment of the Mineral Lands Leasing Act in 1920 (MLA), little Federal coal leasing occurred until the 1960's. At that time, Federal coal leasing increased dramatically. To counteract concerns that lands were being leased primarily for speculation instead of development, the Department of the Interior (DOI) imposed a moratorium on coal leasing in 1971. Congress responded by enacting the Federal Coal Leasing Amendments Act (FCLAA) in 1976. The Department lifted the moratorium in 1979 after promulgating regulations implementing the FCLAA.

A second moratorium was imposed by Congress in August of 1983 because of concerns that the sales in the Powder River Basin resulted in receipt of less than fair market value by the government. Later that year, the DOI initiated the Commission on Fair Market Value Policy for Federal Coal Leasing (Linowes Commission) to review the Department's program for determining fair market value on Federal coal leases. In February of 1984, the Linowes Commission published its report which contained 36 recommendations. The Secretary of the Interior issued a response to the Linowes Commission in March of 1984, stating the intention of the Department to adopt 35 of the 36 recommendations. Also, during this period, the Office of Technology Assessment undertook a congressionally-mandated study to assess the ability of the Federal Coal Leasing Program to ensure the development of leases in an environmentally compatible manner. *Environmental Protection in the Federal Coal Leasing Program* (Washington, D.C., U.S. Congress Office of Technology Assessment, OTA-E-237, May 1984). The con-

gressionally-imposed moratorium on coal leasing expired in May of 1984.

Section 2(a)(2)(A) of the MLA provides that the Secretary of the Interior shall not issue under the MLA Federal mineral leases (coal, onshore oil and gas, sodium, oil shale, phosphate, gilsonite, and potassium) to an entity which holds and has held a Federal coal lease for ten years without producing in commercial quantities. For leases prior to August 4, 1976, this ten-year period expires on August 4, 1986. The effective date of the provisions of section 2(a)(2)(A) was extended to December 31, 1986, in the Continuing Appropriations Act of 1986 (Public Law 99-100).

Section 7 of the MLA provides that if a lessee fails to produce from a Federal lease in commercial quantities by the end of ten years from the date of lease issuance (or the date the lease became subject to section 7), the lease shall be terminated.

Various concerns, such as the depression in the coal market and concern over the management of the Federal coal leasing program led to the introduction of several measures designed to provide some relief from the strict statutory deadlines and to provide reform of the program. Several bills were introduced in the 97th and 98th Congresses, and hearings were conducted during those Congresses.

Five bills were introduced in the Senate during the 99th Congress, and hearings were held. S. 913 (Ford) sought to address the prohibition on obtaining any new leases under the Mineral Lands Leasing Act by limiting the prohibition to competitive coal leases. S. 372 (Johnston) and S. 570 (Wallop, Simpson and Hatch) sought to address issues relating to both the prohibition on obtaining new leases and the strict 10-year diligent development clock under section 7, as well as other concerns. S. 946 (Ford and Rockefeller) sought to address the problem of the impact of imported coal on the domestic coal industry.

S. 2427 (McClure) was introduced as a mark-up vehicle after the Committee began its consideration of these mearures.

Legislative History

S. 372 was introduced on January 31, 1985, by Senator Johnston. S. 570 was introduced on March 5, 1985, by Senator Wallop, with Senators Simpson and Hatch being cosponsors. S. 913 was introduced on April 16, 1985, by Senator Ford. S. 946 was introduced on April 18, 1985 by Senator Ford, with Senator Rockefeller being a cosponsor. Senator McClure introduced amendments 801 and 802 to S. 570 on October 17, 1985. A hearing was held on these measures on November 8, 1985 (S. Hrg. 99-417).

S. 2427 was introduced on May 8, 1986, by Senator McClure as a markup vehicle for the Committee. It included the text of amendment 801, as title II.

A similar measure, H.R. 1934 was introduced on April 3, 1985 by Congressman Cheney. The bill was referred to the House Committee on Interior and Insular Affairs where a hearing was held on June 4, 1985, before the Subcommittee on Mining and Natural Resources. H.R. 1934 was considered in subcommittee markup session on July 25, 1985, and forwarded to the Full Committee, as amend-

ed. On May 14, 1986, in open business session H.R. 1934 was ordered reported with Committee amendments (H. Rept. 99–628) and is presently pending on the House Union calendar.

The Senate Committee on Energy and Natural Resources considered S. 570, S. 372, S. 913 and S. 946, in open business session on April 30, 1986, and May 7, 1986. In open business session of May 13, 1986, S. 2427 was set down before the Committee as the mark-up vehicle, with meetings to consider that measure on May 15, May 21, June 4, June 11, June 18, June 25, July 16, July 23 and July 25. By a majority vote of a quorum present during the open business session on July 25, 1986, the Committee ordered reported S. 2427, with Committee amendments.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on July 16, 1986, by a majority vote of a quorum present recommends that the Senate pass S. 2427, if amended as described herein.

The rollcall vote on reporting the measure was 16 yeas and 1 nay as follows:

YEAS	NAYS
Mr. McClure	Mr. Metzenbaum*
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski*	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	
Mr. Ford	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman*	
Mr. Rockefeller*	

*Indicates proxy vote.

Committee Amendments

Committee amendments 1 through 6, 9, 11, 12, 13, 15, 16, 20, 23 through 38, 40, 42, 43, 44, and 48 are technical and clarifying amendments to S. 2427.

Amendment 2. The amendment is technical and clarifying. It inserts a reference in section 2(a)(2)(A) to section 7(a) of the Mineral Lands Leasing Act of 1920 (MLA), as amended, which if amended by S. 2427, would provide an exception to the conditions of diligent development and continued operation in the case of force majeures or where a lessee holds a mined-out lease solely for the purposes of reclamation.

Amendment 3. The amendment is technical and clarifying. It amends the language of section 101 of the bill to conform to

changes to be made by S. 2427 to section 7 of the MLA. The amendment clarifies that an entity who has made the substantial investment, as well as one who is making the diligent development advance royalty payments, necessary to fulfill the diligent development requirements of section 7 for a lease will not be subject to the prohibition contained in section 2(a)(2)(A) due to holding that lease. Entities who have not yet reached their section 7 diligent development deadline, and who are otherwise subject to the section 2(a)(2)(A) prohibition, would remain subject to the prohibition.

Amendment 7. This amendment provides that an entity would have 6 months from the date of enactment or from when each lease became subject to the prohibition, whichever is later, to elect to pay an additional annual rental of one-half cent per ton, as a means to avoid the section 2(a)(2)(A)(i) prohibition on obtaining competitive coal leases. If the entity fails to so elect and at a later point elects to make the payment in order to be eligible to bid, or to acquire a lease by assignment, the additional annual rental is increased to one cent per ton. All additional annual rental payments are retroactive to the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, or the date on which each lease fell within the prohibition, whichever is later.

Amendment 8. This amendment requires that in order to take advantage of any of the options to avoid the prohibition on obtaining a new lease (turnback, substantial investment, or additional annual rental), the entity, within 60 days from the date of enactment of this Act, must agree to the readjustment of all noncompliance leases not readjusted after August 4, 1976, held by the entity. The purpose of the amendment is to bring such leases under the requirements of section 7.

Amendment 10. This amendment provides that the term "competitive coal lease" for the purpose of the prohibition under section 2(a)(2)(A) does not include leases meeting the requirements set forth in the regulations on emergency leasing, which are more commonly known as maintenance or bypass leases.

Amendments 14 and 18. These amendments recognize that lessees may be required to continue to hold mined-out leases in order to complete required reclamation work. Under these amendments, lessees holding such leases will not be subject to the section 2(a)(2)(A) prohibition or to the conditions of diligent development or continued operation with respect to such leases. The Committee specifically notes that these amendments do not relieve any lessee of any reclamation requirement under applicable law.

Amendment 17. The amendment eliminates non-Federal lands from the acreage limitation applicable to logical mining units (LMU's).

Amendments 18, 23, 30, 31-33, 35-37. These amendments are clarifying in nature. They comprise a revision of terminology and reorganization of section 7 of the MLA, intended solely for the purposes of clarification. They are not substantive in effect.

Amendments 19 and 21. Amendment 19 gives the Secretary of the Interior discretion to require, upon issuance or readjustment, a royalty of less than 12.5 percent of the value of the coal in the case of certain bituminous coal mines meeting specified criteria set forth in the Surface Mining Control and Reclamation Act of 1977,

with respect to a lease issued prior to August 4, 1976, upon the effective date of the first readjustment after enactment of the Federal Coal Leasing and Utilization Act of 1986. Amendment 21 gives the Secretary discretion to require a royalty of not less than 8 percent of the value of the coal in the case of certain bituminous coal mines meeting specified criteria.

Amendment 22. This amendment is self-explanatory.

Amendment 39. This amendment provides that substantial investment means that the expenditure of not less than 5 cents per ton must be towards exploration or planning or for development and construction of operating facilities in the mine plan area on the lease. It also requires the submission of an application for approval of a permit to mine, pursuant to section 506 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), containing certain information.

The Committee intends that a lessee can comply with the substantial investment requirement by making a substantial investment anywhere on a logical mining unit (LMU) containing the noncompliance lease. In such an instance, the amount of the substantial investment would be based on the total recoverable reserves, as determined by the Secretary, in the entire LMU.

The Committee further intends that a lessee who has provided to the Department of the Interior the necessary information for an application for a permit to mine should be deemed to have met the application submission requirement, even in cases where negotiations as to completeness and accuracy continue with the Department.

Amendment 41. The amendment is self-explanatory.

Amendment 45. This amendment operates prospectively to make the section 2(a)(2)(A) clock run with the lease so that entities obtaining a lease by assignment, after the date of enactment, take the lease subject to time already expired on the section 2(a)(2)(A) clock.

Amendment 46. This amendment reaffirms existing law with respect to the distribution of fees that are derived from minerals recovered on public lands between the Federal Government and the States involved. The Office of Management and Budget (OMB) has suggested that administrative costs be deducted prior to distribution of the States' share. The amendment reiterates that this is prohibited by current law.

Amendment 47. This amendment deletes section 108 of S. 2427, which would have, in part, required the Secretary to provide notice of the availability of relief under section 39, prohibited royalty increases pending disposition of requests for relief under section 39, and required the Secretary to consider the impact a failure to grant section 39 relief would have on the lessee's ability to continue operation or to commence production. Section 108 in S. 2427, as introduced, was intended to require the Secretary to grant relief more broadly under section 39.

Section 39 of the Mineral Lands Leasing Act specifically and unambiguously grants the Secretary the authority, for the purpose of encouraging the greatest ultimate recovery of coal and in the interest of conservation of natural resources, to waive, suspend, or reduce the rental or minimum royalty, or reduce the royalty on an

entire leasehold, or any tract or portion thereof segregated for royalty purposes, whenever in the Secretary's judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successful operated under the terms provided therein.

The Committee was concerned that section 108 might encourage automatic and frivolous requests for relief under section 39. The Committee also concluded that the Secretary has adequate authority under the existing section 39 to reduce royalties. The Committee is concerned, however, that the Interior Department's exercise of the authority it already possesses, under existing law, to reduce Federal coal royalties below a statutory minimum when appropriate is unduly narrow.

S. 242 specifically reaffirms that under existing law a minimum royalty of 12.5 percent for surface operations should apply to all leases upon issuance or readjustment. That does not mean that section 39 is to be ignored, or that relief should not be granted at any time, including at the time of lease readjustment, where such relief is justified under section 39 to successfully operate the mine or to promote development.

Amendment 49. This amendment prohibits the issuance by the Secretary of a competitive coal lease to an entity engaged in the extraction or production of coal reserves in a foreign country and the importation of such reserves into the United States. Such imports adversely affect the domestic coal industry, displace jobs domestically, and deter development of Federal leases.

Amendment 50. This amendment deletes title II, which modified section 2(c) of the MLA. That section prohibits common carrier railroads from leasing most Federal coal. The section, under current Department interpretation, includes railroad affiliates. Title II was stricken to maintain current law. The concern was that there might be collusion between the railroad and its affiliate, that there was a history of railroad dominance and misuse of this dominance, and that, even with the restrictions contained in title II, as amended in Committee, the extensive land holdings by certain railroads as a result of Federal land grants provided the railroads with a competitive advantage, in both leasing and transportation, over other coal companies.

Section-by-Section Analysis

Section 1. Provides a short title and a reference that amendments are to the Mineral Lands Leasing Act (MLA).

TITLE I

Section 101. Amends section 2(a)(2)(A) of the MLA as follows:

Inserts paragraph 2(a)(2)(A)(i) which limits the prohibition on obtaining mineral leases under the MLA to competitive coal leases.

Inserts paragraph 2(a)(2)(A)(ii) which provides that the prohibition on obtaining competitive coal leases shall not apply if the entity agrees to relinquish, and the Secretary accepts the relinquishment of, noncompliance coal leases containing three times the estimated recoverable coal reserves contained in the lease being issued.

Inserts paragraph 2(a)(2)(A)(iii) which provides that the prohibition on obtaining competitive coal leases shall not apply to any entity which has made a substantial investment in each noncompliance leases issued prior to August 4, 1976.

Inserts paragraph 2(a)(2)(A)(iv), described in the discussion of amendment.7.

Inserts paragraph 2(a)(2)(A)(v), described in the discussion of amendment 8.

Inserts paragraph 2(a)(2)(A)(vi), defining "noncompliance lease" and "competitive coal leases" for purposes of the section.

Inserts paragraph 2(a)(2)(A)(vii) relating to the estimation of recoverable reserves for purposes of the section.

Inserts paragraph 2(a)(2)(A)(viii), the intent of which is self-explanatory.

Inserts paragraph 2(a)(2)(A)(ix), described in the discussion of amendment 14.

Section 102. Amends section 2(d)(1) of the MLA by providing that noncontiguous areas meeting certain specified criteria may be included in a logical mining unit.

Section 103(a). Amends section 2 of the MLA by inserting a new subsection (a)(4)(A) prohibiting the disclosure of certain information by any officer, employee, contractor or agent of the Department of the Interior or bureau or agency thereof, and a new subsection (a)(4)(B) imposing criminal penalties for willful violations of subsection (a)(4)(A).

Section 103(b). Eliminates the requirement that the period established by the Secretary within which the reserves of an entire logical mining unit will be mined shall not be more than 40 years.

Section 103(c). Amends section 2(d)(7) of the MLA, as described in the discussion of amendment 17.

Section 104. Amends section 7 of the MLA to provide as follows:

Section 7(a) provides that each lease is subject to the conditions of diligent development and continued operation, with certain specified exceptions. The section restates current law that a lease shall require payment of a royalty in an amount to be determined by the Secretary of not less than 12.5 percent of the value of coal as defined by regulation, except that the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations.

The section contains provisions relating to certain special bituminous coal mines, described in the discussion of amendments 19 and 21.

Section 7(a) provides that with respect to leases issued prior to August 4, 1976, upon the effective date of the first readjustment after the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, the amount of the royalty shall be readjusted automatically by operation of law to a rate of not less than 12.5 percent of the value of coal for surface-mined coal, and to a rate of not less than 8 percent in the case of coal recovered by underground mining operations. This provision was intended to clarify existing law that pre-August 4, 1976 leases were, and are, to be subject to the royalty rates required by the Federal Coal Leasing Amendments Act of 1976 (FCLAA) upon their first readjustment after the enactment of FCLAA. The Committee is aware of court

decisions and a Department of the Interior regulation that a mere failure to provide notice in a timely manner operates to waive the requirement under section 7 that leases be readjusted. It is the Committee's view that the statutorily-mandated minimum royalty rates become effective by operation of law, and the Committee disagrees with the Court's ruling in *FMC Wyoming Corp.* v. *Watt,* 587 F. Supp. 1545 (D. Wyo. 1984). *Appeal pending,* No. 84-2175 (10th Cir., filed August 23, 1984). It is the Committee's view that section 7(a) restates this requirement of existing law. (N.B. Discussion of amendment 47.)

Section 7(a) contains a provision relating to leases issued prior to August 4, 1976, from which income is derived from a supply agreement with any nonprofit rural electric cooperative association, described in the discussion of amendment 22.

The intent of the remaining provisions of section 7(a) is self-explanatory.

Section 7(b) provides that a lease which is not producing coal in commercial quantities at the end of 10 years shall be terminated unless the lessee has either made a substantial investment in the lease or chooses to extend it through the annual payment of certain specified diligent development advance royalties.

Section 7(b) provides for two alternatives to avoid automatic lease termination at the end of 10 years. First, this section would permit the holder of a lease to continue to work towards commercial production for an additional 5 years if substantial investment could be demonstrated or, where it could not be, if the lease holder makes an annual payment of diligent development advance royalties based on the production royalty which would otherwise be paid on an assumed annual production of 0.3 percent of total recoverable coal reserves. Second, section 7(b) provides that at the end of 15 years, the lease would terminate unless the lease holder had made a substantial investment and makes annual payments of diligent development advance royalties based on the production royalty which would otherwise be paid on an assumed annual production of 0.7 percent of total recoverable coal reserves. The lease cannot be extended beyond the 20th year without producing in commercial quantities. Production royalties paid for any year shall be reduced by diligent development advance royalties, but not below the amount payable on 1 percent of recoverable coal reserves. Diligent development advance royalties paid during the initial 20-year term of a lease are not to be used to reduce a production royalty after the 20th year.

The Committee adopted separate and distinct diligent development advance royalty provisions for two time periods, years 11 through 15, and 16 through 20. The Committee, for each period, has provided a uniform and creditable royalty payment in order to ensure that such payments would be tax deductible.

Section 7(c) retains the current provisions of law.

Section 7(d) eliminates the 3-year requirement for submission of an operation and reclamation plan to the Secretary of the Interior.

Section 7(e) defines certain terms.

Section 105 adds a new section 8C to the MLA. The intent of the section is self-explanatory.

Section 106. Amends section 30 of the MLA. The section provides for submission of certain information to the Department relating to the transfer of a record title interest or of operating rights in a lease. The section provides that the Secretary shall not consent to the assignment of a lease issued prior to August 4, 1976, unless the lease is readjusted or the assignee agrees that it be readjusted in accordance with section prior to assignment. The section also contains a provision described in the discussion of amendment 45.

Section 107. Amends section 35 of the MLA, as described in the discussion of amendment 46.

Section 108. Adds subparagraph 2(a)(1)(B) to the MLA, which provides that no lessee holding a coal lease eligible for readjustment after August 4, 1976, and prior to the date of enactment which was not readjusted to include the provisions of section 7, may be issued a coal lease or acquire a coal lease by assignment until all coal leases held by the lessee which were eligible for readjustment and which were not readjusted are readjusted. The provision is in response to a failure by the Department of the Interior to readjust certain leases to include the requirement imposed by FCLAA, including the statutorily-mandated minimum royalty rate. It is the Committee's view that the Department cannot administratively waive statutorily-mandated minimum royalties.

Section 109. Adds a new subparagraph 2(a)(5) to the MLA, as described in the discussion of amendment 49.

Cost and Regulatory Considerations

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

August 15, 1986

Rudolph G. Penner
Director

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has reviewed S. 2427, the Federal Coal Leasing and Utilization Act of 1986, as ordered reported by the Senate Committee on Energy and Natural Resources, July 25, 1986.

S. 2427 would modify several provisions governing federal coal leasing. First, it would amend the Federal Coal Leasing Amendments Act (FCLAA) of 1976 to allow holders of non-complying leases to acquire new leases for federal minerals other than coal. (A non-complying lease is a federal coal lease issued before 1976 that is not producing commercial quantities of coal by December 31, 1976.) Holders of non-complying leases would also qualify for new competitive coal leases if they show that they are making substantial investment, if they agree to relinquish non-complying leases that contain three times the recoverable coal reserves estimated to be obtained from new competitive coal leases, or if they agree within certain time restrictions to pay additional rentals. In order to remain eligible to obtain new competitive coal leases, lessees would also have to agree to readjust royalty rates on non-complying leases within a certain time. Royalty readjustments would also be required at the time leases are assigned.

S. 2427 would also amend the current requirement that a federal coal lease issued or readjusted after 1976 terminate if it is not producing in commercial quantities after ten years. If this bill is enacted, lessees would be able to avoid termination of their leases for an additional five-to-ten years if they demonstrate substantial investment or if they pay escalating advance royalties in lieu of "diligent development" until production begins or the lease term ends. In addition, S. 2427 would provide exemptions from strict application of the 12.5 percent royalty rate under certain circumstances.

Finally, the bill would require the General Accounting Office (GAO) to monitor federal coal leasing procedures for five years after the bill's enactment and to report semiannually to the Congress on its findings.

By allowing certain lessees to remain eligible to receive new federal non-coal leases, enactment of S. 2427 would result in slightly larger annual rental payments than would be realized under current law. In addition, by allowing certain lessees to remain eligible for new competitive coal leases, the bill could result in greater federal receipts in the form of additional rentals, annual payments in lieu of diligent development, and additional royalties from readjustments; however, there is no basis for precisely projecting the number of lessees that would choose to remain eligible for new federal leases or to avoid non-compliance.

The additional receipts are not expected to be large. In total, CBO expects that gross receipts are likely to increase over the 1987-1991 period, probably by no more than $5 million per year as a result of the provisions of this bill. The federal government would keep half of any additional receipts, and state governments would be paid the other half.

In addition, based on information from the GAO, CBO estimates that annual costs totaling about $200,000 would be incurred by GAO to prepare the semiannual monitoring reports required by S. 2427.

Other provisions of the bill are not expected to have a significant impact on the federal budget, or on the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner
Director

cc: Honorable J. Bennett Johnston, Jr.
Ranking Minority Member

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2427. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2427, as reported.

Executive Communications

S. 2427 was introduced on May 8, 1986, by Senator McClure as a markup vehicle for the Committee and no legislative reports were requested. The pertinent legislative reports received by the Committee on S. 372, S. 570, S. 913, and S. 946 follows:

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
MAY 07 1986
WASHINGTON D.C. 20510

MAY 6 1986

Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 372, S. 570, S. 913 and S. 946, legislation proposing amendment to several provisions of the Mineral Leasing Act of 1920 (MLA) relating to coal (30 U.S.C. 181 et seq.).

We support amendment of the MLA as described herein.

The Bureau of Land Management (BLM) has responded to the mandate of the MLA and the Federal Coal Leasing Amendments Act of 1976 (FCLAA) in establishing our coal leasing program. We agree with the sponsors of S. 372, S. 570, and S. 913 that some of the provisions of the MLA, as amended by FCLAA, do not allow either the Department or industry sufficient flexibility to accommodate realistic coal development timeframes.

Among the provisions of FCLAA is section 3, which provides that the holder of a Federal coal lease who has held that lease for 10 years and is not producing in commercial quantities, cannot obtain any leases under the MLA after August 4, 1986 (later extended to December 31, 1986). This part of section 3 of FCLAA became section 2(a)(2)(A) of the Mineral Leasing Act. However, it is commonly referred to as "section 3" or the "anti-speculation provisions".

In addition, section 6 of FCLAA modified section 7 of the MLA to terminate any post-1976 lease, whether issued or readjusted after 1976, that is not in commercial production 10 years after its issuance or readjustment. This section is most commonly referred to as "section 7" or the "diligence provisions." As these 10-year periods expire, this provision of the 1976 statute has generated considerable interest among those energy firms holding Federal coal leases, as well as among the environmental community.

We will first summarize our views on the need for amending section 3 and 7; we will then provide our views on specific legislative proposals.

To assess the impacts of sections 3 and 7, the BLM has completed a study entitled "Analysis of Options for Amending the Mineral Leasing Act Section 2(a)(2)(A) and 7" in which they not only review and evaluate implications of the current legislative proposals, but also other options for amending these proposals. In the study, the analysis of alternatives focuses on an examination of the propriety of using a minimum royalty payment, sometimes referred to as a holding fee, as an incentive to encourage diligent development and discourage unproductive

speculative holding of undeveloped leases. This analysis has undergone review and approval in the Administration.

Moreover, that study strongly suggests that enforcement of the present provisions of sections 3 and 7 will have profound adverse repercussions on the Federal minerals program. It indicates that enforcement of these provisions would be contrary to the Federal interest, contrary to congressional policy, and disruptive to efficient program operations.

The analysis identified 224 leases containing about 5.2 billion tons of coal reserves that are not likely to be in compliance with section 3 on December 31, 1986. Approximately 104 of these leases are held by firms with oil and gas interests and roughly 35 each are held by electric utilities, coal producers with no oil and gas interests, and other miscellaneous industry groups. Another 15 of these leases are held by steel companies.

The States with the most leases that we expect to be in a noncompliance status on December 31, 1986, are Utah with 84 leases, Wyoming with 31, and Colorado with 42 leases.

The study also indicates that enforcement of section 3 would generate ripple effects. In the extreme case, 300 coal mining companies and 150 oil and gas companies when all their affiliates are considered, may be prevented from obtaining leases under the Mineral Leasing Act after December 31, 1986, if section 3 is not amended or repealed.

The study notes that all these figures must be viewed as "most likely" estimates from a wide range of possible outcomes based on numerous assumptions regarding industry actions that have not yet taken place, such as logical mining units (LMU) filings and production restarts.

Specifically, enforcement of section 3 will likely have a number of detrimental results:

- A decision by lessees against relinquishing or assigning noncomplying leases will mean a reduction in the number of firms that may compete for Federal mineral leases under the Mineral Leasing Act.

- Reduced competition for leases, the potential requirement to accept bids that are less than the bid that might have been offered if more eligible bidders could participate for a tract, and the relinquishment of leases that might otherwise in the late 1980's have generated royalties to the Federal Government, would reduce total lease revenue payments to the government, thereby decreasing redistribution to the States and increasing the Federal deficit.

- If substantial numbers of noncomplying leases are relinquished, this may lead to the unanticipated need to lease additional coal resources to meet the Nation's energy requirements.

- Holders of noncomplying leases may be encouraged simply to swap ownership of their leases with other lessees to start new 10-year holding periods and thus avoid the prohibition on acquiring additional Federal mineral leases under the Mineral Leasing Act.

- Lessees will be prevented from developing some leases at the time at which the leases would have maximum value to the lessee or the nation.

- Enforcement of the section 3 limitation will impose a significant administrative burden on BLM.

Enforcement of section 7 is expected to have similar undesirable effects. Specifically:

- Lease revenues and lease competition may be reduced as prospective lessees discount or refuse to submit bids for leases because of the possibility that they will not be able to sell and develop coal efficiently within the permitted time.

- Just as for section 3, lessees will be prevented from developing some leases at the time at which the leases would have maximum value to the lessee or the nation.

- The 10-year time limit for diligent development will effectively kill the assignments market, which can assist in ensuring that leases are allocated to their highest valued use.

Although the problems caused by sections 3 and 7 will occur at different times and will affect different groups of leases, conceptually the two sections involve the same policy issue, namely the design of a diligence/anti-speculation policy. Because it is a single issue, it is possible and indeed important to provide a single, consistent solution. Accordingly, we believe the Congress, in addressing sections 3 and 7, should consider a single approach to the development of a diligence/anti-speculation policy.

As the result of the BLM analyses and consideration of the alternative approaches to amending sections 3 and 7, we recommend that the Congress amend sections 3 and 7 to replace the diligence/anti-speculation provisions with a minimum advance royalty payment in lieu of lessee disqualification and lease termination, enabling lessees to make advance royalty payment instead of the diligent development requirement of section 7. This is similar to the existing provision of payment in lieu of continued operation. This approach is consistent with a recommendation of the Linowes Commission as well as previous statements made by this Administration.

The specific elements of our recommendation include amending section 3 so that the prohibition on acquisition of new leases would apply only to new coal leases, not to all mineral leases. In addition, the prohibition would be applied only to the lessees and the consolidated subsidiaries of the parent corporation, as interpreted by the Internal Revenue Service.

The bills addressing a holding fee generally suggest the application of the fee to newly acquired leases. We recommend a broader application. That is, the addition of an optional holding fee that current lessees may elect to pay on their otherwise noncomplying leases. The Department of the Interior published final guidelines interpreting the current provisions of section 3 in the Federal Register on August 29, 1985 (50 FR 35125). Under the current statute as interpreted by the Office of the Solicitor, the guidelines set an interval of time of up to 10 years during which a lease could successfully produce in commercial quantities. Using the approach which would allow a lessee to pay advance royalties in lieu of the diligent development and continued operation requirement and subsequently recoup that payment through production without the artificial time constraints of the 20-year lease term eliminates any need for a 10-year production interval. We support such a change in the section 3 and section 7 requirements.

We recommend that the holding fee be defined as a minimum advance royalty payment in lieu of production, related to the market value of similar produced coal in the region (value based), and creditable against royalties later due on production in excess of the minimum amount on which the holding fee is calculated. That is, during the years when coal is produced and the previously paid holding fees are credited, the advance royalty payment would be required to be at least equal to the holding fee assessed in years of nonproduction. It is further recommended that the advance royalty be automatically applicable to all new and readjusted leases, and be available as an election, by the lessee, on pre-1976 leases prior to readjustment. With respect to section 7, the lessees should have the option of either remaining subject to the risk of termination of the lease at the end of the 10-year period specified in section 7, or electing to pay the advance royalty. This would ensure that a lease near production is not arbitrarily cancelled.

To ensure that the advance royalty can be recognized as an expense in the year paid, for tax purposes, the basis of the advance royalty should be defined as a fixed percentage of recoverable reserves by coal region. On the basis of our analysis, we judge that a 0.3 percent annual rate would be an appropriate level of production on which to base the minimum advance royalty payment. Further, we believe that the production level on which the fee would be assessed is best determined by the Secretary at the time of implementation. However, if Congress should decide to establish the production level by law, then we recommend that it not be higher than a 0.3 percent annual production rate. The minimum advance royalty would then be obtained by multiplying this rate by the recoverable reserves and the current market price for that quality coal in the particular region.

Our analyses further suggests that the 10-year development timeframe before application of the minimum advance royalty requirement may be too short to permit compliance with the diligent development requirement. The time needed to enter a coal sales contract, obtain needed permits for opening a mine, and develop and bring a mine into production suggests that a 12 to 15-year diligent development period may be more realistic. Consequently, we recommend that Congress extend the diligent development period as we suggest.

In addition, we recommend that there be no limit on the number of years that a lessee could make minimum advance royalty payments in lieu of production. This would prevent the sort of artificial time constraint and subsequent problems that

the current provisions of sections 3 and 7 have caused. In any event, our analyses show that with minimum royalties at the 0.3 percent rate it is highly unlikely that a lessee would make payments for as long as 10 years because the lessee would no longer be in an adequate profit position, prior to beginning production or relinquishing a tract.

An important advantage of implementing a value-based fee (related to the current selling price of coal) is that it should reduce the need for the Secretary to make frequent adjustments to the level of advance royalty as a result of changes in market conditions, since variations in market price will be automatically reflected. Indeed, a change in the fee level would be warranted only if major structural changes occurred in coal markets. Thus, it is not currently foreseen that the Secretary would need to adjust the fee basis in future years. If, in the unlikely circumstance that it became necessary to adjust the fee basis, the Secretary would prepare an analysis of the determinations regarding specific terms and levels of fees.

In OTA's report Potential Effects of Section 3 of the Federal Coal Leasing Amendments Act of 1976, several options for amending section 3 are presented. OTA addresses many of the weaknesses of the cents/ton fee and the advantages of the ad valorem tax in its report. However, the ad valorem tax is summarily rejected because of its "administrative burden". No analysis appears in the report that shows that the proposed one cent/ton fee is appropriate or encourages development. Additional quantitative analysis must be done supporting their conclusion before its merits can be accurately evaluated.

We have these comments on S. 372, S. 570, S. 913 and S. 946, currently under consideration by the Congress. Because several features of the legislation are common to more than one proposal, our comments address similar provisions in all of the bills rather than dealing with each bill separately.

With regard to the section 3 prohibition of the acquisition of additional mineral leases under the Mineral Leasing Act, S. 372 provides that this prohibition would not apply:

(1) where an entity agrees to relinquish a noncomplying coal lease or leases containing estimated recoverable coal reserves equivalent to the estimated recoverable reserves from the lease or leases being issued;

(2) where an entity holds noncomplying leases issued prior to August 4, 1976, and pays an additional annual rental or holding fee on those coal deposits being acquired; and

(3) where the Secretary accepts the relinquishment by the lessee of any coal lease issued prior to August 4, 1976, where there has not been significant surface disturbance.

S. 570 would simply delete section 3. S. 913 would restrict application of the leasing prohibition only to coal leases.

As we have already discussed, we favor restricting the prohibition provisions of section 3 to the acquisition of new coal leases only. However, we do not recommend amending the prohibition provision to allow the relinquishment of noncomplying leases (or reserves) in return for the privilege of receiving new leases. As discussed in the analytic report (at pages 54 through 56) referred to earlier, such a provision would cause distortions in the coal lease market and may cause lessees to hold lower valued leases simply for the purpose of relinquishing them to obtain new leases. In addition, if a holding fee is to be substituted for the current diligence/anti-speculation provisions, then we recommend that it be applied to any lease that has been held longer than the permitted diligence period and not applied only when a lessee obtains additional leases (while holding noncomplying leases).

Both S. 372 and S. 570 would amend section 7 of the Mineral Leasing Act to provide that a coal lease shall be for a term of 20 years and for so long thereafter as the conditions of continued operation is met. Such language ends the incongruity in current law in which the payment of advance royalties in lieu of continued operation does not clearly extend the lease, as production in commercial quantities annually is now required to extend the lease beyond the 20th year. We support such a provision.

Section 3 of S. 372 would amend section 7(a) of the Mineral Leasing Act to provide that readjustment of "old" leases to the new royalty rates (12 1/2 percent for surface coal and 8 percent for underground coal) will occur by operation of law on their next anniversary date. While we believe we have the process of readjusting "old" coal leases under control, and all lease readjustments are being accomplished as anniversary dates come up, we do not oppose having this occur by operation of law, without the need for BLM action and the possible delay and uncertainty resulting from lessees' protests and appeals of these BLM actions. In addition, we have consistently maintained that all coal leases readjusted after FCLAA must contain the FCLAA royalty rates as a matter of law. This interpretation is subject to appeals to the U.S. Court of Appeals for the Tenth Circuit, FMC v. Hodel (587 F.Supp. 1545 D. Wyo. 1984) and Coastal States Energy Co. v. Hodel (Cir. No. 83-730 D. Utah, August 2, 1985, and January 17, 1986), the former by the Department and the latter by the lessee. We believe that the certainty which this provision establishes is beneficial, but it should not be viewed as creating any new legal requirement other than the automatic imposition of the royalty rate in order to avoid the need for administrative action by the Secretary to readjust the royalty rate on old coal leases.

Both S. 372 and S. 570 also would provide that a lease not producing coal in commercial quantities at the end of 10 years after lease issuance or readjustment after August 4, 1986, would be terminated unless the lessee chooses to extend the lease beyond the 10th lease year through payment of advance royalties in lieu of diligent development. The advance royalties would be assessed on an escalating basis.

While we support the use of a fee as we have seriously stated earlier, we do not agree with the concept of escalating advance royalties as provided for in S. 372 and S. 570. Specifically, in view of current and foreseeable market conditions, escalation is not needed to provide diligence incentives and may simply cause

lessees to relinquish leases rather than making rational economic decisions concerning the near-term likelihood of the lease being developed. Moreover, the inclusion of crediting for minimum royalties, as we have recommended, will provide an escalating incentive to produce leases without imposing the escalating financial burden that would result from the escalating fee. As previously stated, it is highly unlikely that a lessee would make payments for a lengthy period prior to beginning production or relinquishing a tract. We would like to avoid the adverse tax effects by suggesting a constant rate in lieu of the escalating rate. Finally, enforcement of the escalation provision would be an extreme administrative burden, especially given budget concerns.

Both S. 372 and S. 570 would provide for crediting the previously paid advance royalties against the actual production royalties that would be subsequently due from the producing lease. We support this provision. However, S. 372 provides for no minimum cash royalty payment during production while S. 570 would provide for a minimum payment. We support the inclusion of a minimum payment provision as it will stabilize the lease revenue paid to States. We recommend that the minimum payment be based on the same production level as that used in computing the minimum or advance royalty to be applied to noncomplying leases.

Section 4 of S. 372 would define "competitive bidding" as the receipt of bids from two or more bidders for other than maintenance or bypass tracts. We do not believe this definition is necessary.

Receipt of two or more bids is not an infallible indicator of competition or of a bidder's desire to mine a new production tract. Preexisting surface and mineral ownership patterns in an area and other factors may render what appears to be a new production tract attractive to only one mining company. If that company were denied a lease simply because no one else bid on the tract, Federal and State governments would be denied mineral leasing revenues, and the country and the company would be denied the energy that would be produced from the mine. As in OCS leasing, we believe that the Secretary should have authority to determine if a single bid represents fair market value for a particular tract.

We do not believe the proposal is necessary in order to assure receipt of fair market value. The Secretary recently made decisions on a number of issues related to the Federal coal leasing program. Among the major issues studied during the 2-1/2 year review were methods of better assuring that fair market value is achieved for Federal coal leased. Changes have been made to tract delineation procedures, appraisal methodologies, and lease sale procedures to increase the likelihood that the bids accepted for Federal coal leases are at least fair market value for those leases.

Also, both S. 372 and S. 570 would direct the Secretary to promulgate rules and regulations to provide for experimentation with the negotiated sale of leases for bypass and maintenance tracts. Such provision would give the Secretary the authority to conduct sales. We oppose the authority because we believe it is inadvisable not to have public offerings. Both bills would require promulgation of such rules within six months of enactment. We recommend that this provision be

deleted because experience has shown that it takes more than six months to complete rulemaking. If the bill is enacted, the Department of the Interior would complete the necessary rulemaking as expeditiously as possible.

Section 5 of S. 372 would also prohibit any officer, employee, contractor or agent of the Department from disclosing to anyone not an employee, contractor or agent of the Department any data developed or used by the Department for estimating coal tract value. We support the concept of treating such data as confidential, and we believe the Freedom of Information Act provides adequate protection. However, if this provision remains in the bill, the type of data intended to be covered should be described in more detail. For example, the presale appraisal value and the identification of specific comparables, if any, should be confidential. Other factors, such as tonnage, BTU's, stripping ratio, prices, etc., in most cases, should not have a confidential classification. Our concern is what is meant by "any data developed by the Department of the Interior for estimating coal tract value." We do not believe this provision is necessary, but if this provision remains in the bill, we believe it must be defined because an employee may be guilty of making a disclosure without being aware of it.

The Department manages resources for the public good. We do not believe that we can obtain the trust of the public without providing some information as to how the Department is managing the public resources. As a matter of policy, the Department believes that certain coal data should remain confidential and the recent program review has heightened its awareness of the need to protect confidential coal data. Accordingly, we have developed additional procedures to protect confidential data. However, although there is a need to protect the integrity of the competitive leasing process, certain types of information (e.g., approximate tonnage, BTU's stripping ratio, etc.) must be made available either before the sale to assist potential bidders in preparing bids or after the sale to assure the public that the Department is discharging its responsibilities properly. In addition, we release, upon request, the fair market value estimate for a tract after a lease is issued. A reason for doing this is to demonstrate that the high bid either meets or exceeds the government's estimate of fair market value. Because of the Department's strengthened procedures for protecting confidential data, we seriously question the need to have such a provision in the Mineral Leasing Act.

Section 6 of S. 372 also would direct the Comptroller General to monitor the coal program for five years and submit semiannual reports to the Congress. We believe this requirement is redundant. Safeguards are already in place to assure that the new coal program will be carefully monitored, and any additional review would be duplicative. The Department's Inspector General will conduct periodic audits of the coal program as indicated by the Secretary in his response to Congress on March 19, 1984, regarding the Linowes Commission's recommendations. Further, the Department will work toward integrating program oversight functions into internal program management under OMB Directive A-123 and the Federal Manager's Financial Integrity Act.

Section 7 of S. 372 would amend section 30 of the Mineral Leasing Act to direct the Secretary to promulgate regulations which would require that, prior to his approval of any transfer of a record title interest or assignment of operating rights in a lease, the transferor submit a financial document describing the value paid or

promised for the transfer. The regulations would set forth the type of information required to be filed. While we do not believe legislation is necessary, we do not object to this provision. Any information which meets the Freedom of Information Act exclusion criteria would be protected from release to the public.

Section 3 of S. 570 would eliminate the requirement that all lands in a logical mining unit shall be contiguous. We support the repeal of this requirement. The contiguity requirement ignores the geological, geographical and engineering realities of coal deposits and is inconsistent with the purpose of logical mining unit planning -- that the lands will be mined as a single unit by a single operator.

We believe that the matter of combining tracts separated by barriers such as rights-of-way and the like has been handled by the 1982 operating regulations defining contiguity in terms of legal subdivisions. There is no compelling reason to keep the requirement in the law. Accordingly, we believe it is appropriate to delete this statutory provision.

Section 5 of S. 570 would delete the requirement in the present law that all reserves in the entire logical mining unit shall be mined within 40 years. We agree that the 40-year requirement should be deleted. The incentive to form a logical mining unit is seriously compromised by the present requirement. A lessee contemplating forming a logical mining unit faces the problem that a 40-year mineout may limit the size of the LMU or demand an unreasonable production rate which would be inconsistent with the most efficient mining practice. The current provision will not only negatively impact State revenues, but create an artificiality in the definition of an LMU, inconsistent with the notion that an LMU should be an administrative determination, for diligence purposes, of a reasonable mining plan.

Furthermore, the 40-year requirement does not on its face take into account the years under current law in which advance royalties may be paid in lieu of continued operation of the leases in a logical mining unit; that is, a lessee who pays advance royalties for 10 years after initiating production is faced with a maximum of a 30-year mineout requirement.

Both S. 372 and S. 570 remove the requirement for submittal of a resource recovery and protection plan within 3 years. We agree with this provision. This is a redundance of the requirement that a more detailed plan is required at the time of permit approval.

S. 946 would amend section 2(a) of the Mineral Leasing Act, as amended by section 3 of the Federal Coal Leasing Amendments Act of 1976, by adding a provision directing the Secretary of the Interior not to issue a competitive coal lease to an entity that is affiliated with an entity engaged in the extraction or production of coal reserves in a foreign country and the importation of such reserves into the United States. Such a measure would run counter to the interests of consumers by not allowing fair competition to set price levels. Instead, S. 946 would legislate constraints which would impede the competitive process and violate our international trade obligations. We are also concerned that the proposal could have significant effects on a number of the policy objectives of our Federal coal leasing program. Accordingly, we oppose S. 946.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ASSISTANT SECRETARY J. Steven Griles

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 12 1986

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
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WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on proposed amendments 801 and 802 to S. 570, legislation proposing amendment to the provisions of the Mineral Leasing Act of 1920 (MLA) relating to coal (30 U.S.C. 181 et seq.).

We support amendment of the MLA as described herein.

Amendment 802 would repeal section 2(c) of the Mineral Leasing Act, while amendment 801 would amend section 2(c) to allow a common carrier railroad company to hold Federal leases of coal deposits subject to certain specified conditions.

Section 2(c) of the Mineral Leasing Act provides that no company operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of the Mineral Leasing Act for any coal deposits except for its own use for railroad purposes. No such company shall receive or hold under permit or lease more than 10,240 acres, in the aggregate, or more than one permit or lease for each 200 miles of its railroad lines served or to be served from such coal deposits, exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced other than by steam.

A railroad of less than 200 miles in length may secure one permit or lease, but it cannot hold a permit or lease for lands in any State in which it does not operate main or branch lines.

We favor repeal of section 2(c) and recommend that it be replaced with a provision of cooperative leasing for checkerboard areas.

The Federal Coal Leasing Program is premised on leasing Federal coal to achieve several objectives:

- orderly and timely development of the Federal coal resources;
- the consideration of the economic and environmental consequences of leasing;
- the receipt of fair market value for those resources;
- the promotion of competition within the coal industry; and

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- o provision of access to energy resources to insure energy independence and competitive and efficient energy markets.

The program has been accomplished through an intricate balance of these objectives as seen by Federal, State and local concerns utilizing the regional coal leasing process recently adopted by the Secretary of the Interior. The Regional Coal Team (RCT) has been the core to this approach. Through this team approach, decisions are fashioned, weighing various concerns resulting in the proper selection of coal tracts to be delineated, selected and scheduled for sale. Cooperative leasing of the checkerboard lands must be made part of the overall leasing program. We support the concept of cooperative leasing suggested by amendment 801 but recommend several changes which will help achieve the objectives stated above.

We have the following specific recommendations regarding amendment 801.

Paragraph (2)(A) would address two of the conditions we believe are specifically supportive of the coal leasing program objectives. These are the requirement for cooperative leasing and the availability of data. The proposed amendment would require the railroad or affiliated company to notify the Secretary of its desire to compete for a Federal lease to be offered in the checkerboard. Upon notification, the Secretary would make an explicit finding as to whether competition for the Federal lease would be substantially enhanced. If the Secretary finds such enhancement, the Secretary would:

- o identify a potential mining unit containing the Federal tract as well as tracts owned by the railroad;

- o require the railroad, as a precondition for bidding on the Federal tract, to agree to make available at cost to any potential bidder, any and all exploration data in the railroad's possession concerning the extent and nature of the land-grant coal deposits; and

- o require the railroad, as a further precondition for bidding, to agree to offer for lease to the winner of the Federal tract, if not the railroad, the land-grant coal deposits on terms mutually agreed to by the Secretary and the railroad.

While most of this requirement provides the type of guidance necessary to assure a successful cooperative leasing program, we do not believe that requiring the Secretary to make a finding of significant competition enhancement will guarantee the success of the cooperative leasing approach. Our experience is that it is very difficult to predict accurately competitive interest in a Federal lease tract. We have found tracts that would support new mining operations and received indications of leasing interest from several companies, yet actually received only one bid or no bids; conversely, tracts that were believed to be captive to a single adjacent operator actually have received more than one bid.

Competition will be enhanced when there is a greater number of bidders. It is a general policy of the Department of the Interior to foster a competitive environment. Because the number of tracts which have received more than one bid

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is historically low, we must be careful not to allow further impediments to any competition. Therefore, we believe, as we stated previously, that it would be difficult for the Secretary to make an accurate finding of no competitive interest. We would prefer an approach that competition is to be based on what occurs at the time of the sale and not on a predetermined finding of the Secretary. Such projections in the past, as stated previously, have not been accurate and will only subject such determinations to litigation and/or second-guessing.

Rather than the cooperative leasing procedures suggested by the proposed amendment, we favor advance negotiation of bid and royalty shares to reduce uncertainty. This is also important because the entire lease package may bring more revenue than the sum of its parts. Moreover, advance negotiation of shares is consistent with unitization in oil and gas leasing. All lands would be available for consideration and identification by expressions of interest by all companies and subject to the competitive provisions consistent with the Federal coal leasing program as implemented through the RCTs and administered by the Secretary.

Subparagraph (B) of paragraph (2) would provide for four exceptions or situations in which the railroad or its affiliate may bid on a Federal lease without conditions. Those exceptions occur when:

- the Secretary does not make a finding of significant competition enhancement;
- the railroad-affiliated company has an interest of less than 30 percent in the joint venture which would own or control the Federal lease;
- the Federal coal constitutes less than 35 percent of the reserves the lessee will need to develop and operate its mine (when the government is a minority coal owner); or
- the railroad-affiliated company is already operating a mine on the adjacent property and the Federal coal either is already in or adjacent to the mine's permit areas or will be bypassed or is needed to maintain the mine (similar to bypass and maintenance leasing exceptions in the present leasing program).

As stated earlier in this report, we do not believe that a predetermined Secretarial finding is the best method of determining competition, and therefore there is no need for an exception from cooperative leasing when such a finding is absent.

Second, concerning the exemptions for a railroad-affiliated company which has an interest of less than 30 percent in the joint venture which would own or control the Federal lease, or if the Federal coal would constitute less than 35 percent of the reserves the lessee will need to develop and operate its mine, we do not know if the percentages identified in the proposed amendment are appropriate. Rather than an arbitrary percentage cutoff, we would recommend each prospective lease be evaluated and analyzed by the RCT before an exemption to cooperative leasing is allowed. This insures that the decision is made in a public forum with appropriate opportunity for public comment and participation.

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Third, we support the exemption for maintenance and bypass situations. The justification for a maintenance or bypass lease for a railroad affiliate should not be any different than for any other lessee. If stated conditions are met including, among others, how the coal will be mined, the need to maintain an existing operation, and the amount of coal to be leased not exceeding eight years of recoverable reserves at specified rate of production, an emergency lease sale may be held. There is an existing process in the Federal Coal Leasing Program that provides for the leasing of such tracts while ensuring for delineation and selection of tracts in the most competitive manner (43 CFR 3425.1-4). We believe that these procedures embody appropriate safeguards to ensure that maintenance and bypass leasing will be in the public interest and subject to public review and participation. Further, consultation on bypass and maintenance lease sales with the appropriate RCT before a lease sale occurs is a provision of the recently executed RCT charters.

We agree with the objective of the bidding data disclosure provision of the proposed amendment. However, we recommend that the legislation also provide guidance as to what would constitute a reasonable cost to any potential bidder interested in acquiring exploration data. Further, we believe all potential bidders for the lease package should be able to obtain the necessary geological data directly from the jointly held mining unit, as an option, rather than purchasing such information from the railroad.

Amendment 801 would also provide for disclosure of transportation contracts and bids by the railroads to the Secretary, and for the Secretary to disclose these contracts under certain conditions. One condition is if the contract and the bids submitted by the railroad company to transport a producer's coal are not identical in all material respects. In discussions with railroad affiliates the idea was put forward that the term "material" would mean any provisions or statements of conditions different from one contract to another. We understand and support this simple test and believe it is important to assure the general public and others that there is no unfair advantage.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ASSISTANT SECRETARY J. STEPHEN GRILES

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 1 1986

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On May 6, 1986, the Department of the Interior wrote to you to express its opposition to S. 946. The bill would amend the Mineral Leasing Act by adding a provision directing the Secretary of the Interior not to issue a competitive coal lease to an entity that is affiliated with an entity engaged in the extraction or production of coal reserves in a foreign country and the importation of such reserves into the United States. An amendment identical to S. 946 was approved by the committee at the July 16 mark-up on S. 2427.

We again wish to express our opposition to the coal import amendment. The measure runs counter to the interests of consumers by not allowing fair competition to set price levels. Ultimate passage of the amendment would also legislate constraints that would impede the competitive process.

When S. 2427 goes to the Senate floor for consideration, I hope you will consider the Department's position. I again urge you to oppose this ill-advised legislation.

Sincerely,

James E Cason

Acting Assistant Secretary
Land and Minerals Management

Additional Views of Senator McClure

I am providing these additional views because I believe that one critically important provision necessary to ensure adequate competition for and proper management of federal coal resources is absent from this bill. Title II of S. 2427, as I introduced it, would have modified section 2(c) of the Mineral Leasing Act of 1920 to permit railroad-affiliated mining companies to obtain federal coal leases under very stringent conditions. During Committee mark-up numerous amendments were agreed to which provide further coal leasing and transportation restrictions on railroad-affiliated mining companies and their sister railroads. Despite these amendments, Title II was deleted from the bill by a 9 to 8 vote. I feel compelled to explain why I continue to believe it is in the public interest to provide to railroad-affiliated mining companies with limited authority to lease federal coal, why Title II, as amended in Committee, responds fully to any legitimate concerns proponents of section 2(c) may have, and why I will continue to seek modification of that provision.

Section 2(c) provides that:

> No company or corporation operating a common carrier railroad shall be given or hold a permit or lease under the provisions [of the Mineral Lands Leasing Act] * * * for any coal deposits except for its own use for * * * railroad purposes.

When section 2(c) was enacted 66 years ago, the railroads were viewed as the most powerful segment of the American economy. They were particularly powerful in the West, where they produced coal for their locomotives and there were few other coal producers. Congress was fearful that allowing the railroads to mine federal coal for commercial sale as well as to transport it might result in railroad dominance over public land coal development. The Department of Justice has recently taken the position that section 2(c) also applies to independent mining companies affiliated with a common carrier railroad, as distinguished from the railroad itself. The Department of the Interior had long held a position to the contrary. But in 1982 the Solicitor revisited that position, reluctantly acquiesced in the Justice Department's view, and the Secretary suspended any further leasing to railroad mining affiliates. Despite this interpretation, both departments nevertheless continue to advocate repeal of section 2(c). Indeed, repeal has been the official position of the last seven Administrations. As evidenced elsewhere in this report, the present Administration supported Title II, expressing minor reservations which were fully dealt with by the Committee.

SF Minerals, Meridians Minerals and Rocky Mountain Energy, the independent mining affiliates of the three major western railroads (Santa Fe, Burlington Northern and Union Pacific, respectively) are the principal proponents of repeal or modification of section 2(c). They are modern, efficient mining companies with existing coal operations on private and state lands and have a strong desire to have access to federal coal so that they may more efficiently develop their own reserves and become a competitive force in the federal coal market. However, our Committee consideration of the issue developed information indicating that there are a substantial number of other companies whose existing or proposed affiliation with a common carrier railroad may subject them as well to the section 2(c) prohibition. A number of those companies are current federal coal lease holders, such as Kerr McGee, U.S. Steel, ARCO Coal, Consolidation Coal, Colowyo Coal and W.R. Grace. It is estimated that the amount of recoverable reserves of federally leased coal in which these companies may have an interest is about 4 billion tons, compared to the less than 1 billion tons of reserves under federal coal leases held by the affiliates of the three major western railroads directly or indirectly under leases obtained during the period when the Secretary permitted railroad affiliates to obtain federal coal leases. Thus the problem is obviously of broad scope.

The reasons why section 2(c) is no longer in the public interest have been clearly and repeatedly identified over the past 16 years. Section 2(c) is anachronistic, redundant, and anticompetitive. It is anachronistic because, during the sixty-six intervening years since its enactment, it has outlived whatever purpose it may have served at that time. Fear that western railroads would dominate western coal production if they had access to federal coal leases is not realistic in the 1980's or for the future. If the railroads ever had a dominant position, it has long since disappeared with the entry of electric utilities, major oil companies and large nationally based coal companies into western coal development, as is evident from the list of federal coal lessees which were identified in our hearings as having section 3 and royalty readjustment problems under existing law. As early as 1970, the Public Land Law Review Commission (which included the late Senator Jackson and five other distinguished members of the Energy and Natural Resources Committee) in its report to Congress and the President stated that the fears of monopolistic control which led to the enactment of section 2(c) were no longer appropriate and recommended its outright repeal. Based on that recommendation this Committee in 1975 favorably reported and the Senate passed an outright repeal of section 2(c) as part of the legislation which was eventually enacted as the Federal Coal Leasing Amendment Act of 1976. Unfortunately, the Senate decided to accept the House version of the bill which contained no repealer (an amendment repealing section 2(c) having been defeated in the House Interior Committee on an 18–18 tie vote). Consequently, the Senate's section 2(c) repealer was never subject to conference committee deliberation.

A few years later the Justice Department's Antitrust Division concluded in its 1980 report entitled *"Competition in the Coal Industry"* that section 2(c) was no longer necessary and should be repealed. That conclusion is particularly significant because the Justice Department began its study with the assumption that section

2(c) was still needed to protect or assignment of *every* coal lease on a case-by-case basis to determine if it would create or maintain a situation inconsistent with the antitrust laws. With the section 15 antitrust review in place and working, and the sanction of forfeiture available for post-lease anticompetitive activities available under section 27, the blanket restriction of section 2(c) is clearly not necessary.

Finally, as the Justice Department has emphasized, section 2(c) is anticompetitve. Competition for federal coal leases is now considered the best means of avoiding market dominance by large coal producers in the West. Section 2(c), by prohibiting mining companies affiliated with railroads from bidding for federal coal leases, detracts from rather than protects competition. It creates an artificial barrier against bidding for federal coal leases for a broad class of potential competitors, as the Justice Department concluded in its 1980 report:

> Leasing to railroads can also be competitively beneficial by allowing additional competitors to enter the market.
> * * *
>
> Plainly, whatever the merits of a general prohibition to leasing to the railroad in 1920, the broad sweep of section 2(c) is now an impediment to rather than a bulwark [sic] of competition. [*Competition in the Coal Industry,* 88–89, 1980].

As previoulsy noted, the Linowes Commission reached a similar conclusion in its 1984 report.

Section 2(c) also frustrates the most efficent and environmentally sound mining of intermingled federal, railroad, state and other non-federally owned coal located in the competition, but was persuaded by its in-depth review of the coal industry and the western railroads' role in the industry that there was no basis for that concern. Consequently in 1981 the late Senator Jackson and I cosponsored a bill to repeal section 2(c), but it became enmeshed in coal slurry legislation controversies and we did not seek its enactment. However, since the Interior Department at that time was interpreting section 2(c) to permit bona fide mining affiliates of railroads to obtain federal coal leases, there was no pressing need to repeal section 2(c). That changed in December of 1982 when the Department reversed field on the issue. Consequently when the Linowes Commission concluded in 1984, in its *Fair Market Value Policy For Federal Coal Leasing* report, that section 2(c) "impeded development" of federal coal and recommended modification, I concluded that the time had come when something had to be done about section 2(c) in the interest of greater competition for and better management of federal coal.

Section 2(c) is also redundant. Two stringent provisions of existing law ensure that no repeal or modification of section 2(c) can lead to anticompetitive abuses. Section 27 of the Mineral Leasing Act has long provided for forfeiture of federal leases held by a company which engaged in anticompetitive activity involving such leases. The Federal Coal Leasing Amendments Act of 1976 provides an additional carefully constructed provision designed to further enhance competition. Section 15 requires the Attorney General to review the proposed issuance extensive so-called "checkerboard" railroad land grant areas of the West. If railroad mining affiliates

wish to develop their reserves within a checkerboard they are forced to mine alternate sections, bypassing the federal sections and leaving buffers of coal along section lines. This inability to develop intermingled coal ownerships in a logical mining unit frustrates the maximum utilization of the resource, but does, unfortunately increase operating costs and enviromental disturbance. This situation is the senseless legacy of section 2(c). Moreover, attempts to obtain those potential islands of by-passed federal coal by exchange under the Federal Land Policy and Management Act have also been opposed by the National Coal Association and several large coal companies, who claim that section 2(c) somehow also bars such fee coal exchanges. Thus, the federal coal in the railroad checkerboards is essentially locked up, unless the railroad coal mining affiliates choose to lease their reserves to other coal companies who can then acquire the adjacent federal coal. This has been the historic pattern.

I understand, but do not sympathize with those who would oppose any reform of section 2(c) simply to hurt railroads. I also understand those elements within the coal industry which seek to protect their own monopolistic position. Companies such as Consol, Peabody, Pittsburgh & Midway, and NERCO have profited by section 2(c). The federal government and the public have not. These companies have used the inability of railroads and their affiliates to mine their own coal because of section 2(c)'s prohibition on obtaining leases on adjacent federal tracts to acquire the railroad's coal. They have obtained long term leases of railroad reserves and are sitting on them. They have locked up much of the checkerboard on bargain basement terms which if granted by any federal official would have resulted in investigations and reform long ago.

It is not my intention to save the railroads or their affiliates from bad corporate decisions. Those who want to punish railroads should take great comfort in how these resources have been squandered. The effect is that the coal is now locked up. No one else will be able to mine the adjacent federal tracts controlled by these major coal companies who have locked up the railroads' coal. They will not be leased until Consol, NERCO, Pittsburgh & Midway, Peabody, Mobil and the others want to lease them, and then they will be leased on bids determined by those companies, not by competition. That is the reality. If section 2(c) were modified as I propose the railroads or their affiliates still could no longer offer their lands up for competitive lease, since they have already leased out most at their minable reserves.

All of the foregoing fully justifies outright repeal of section 2(c). Nevertheless, in recognition of the Linowes Commission recommendation and some concerns that have historically been expressed by certain companies in the coal industry that oppose repeal of section 2(c), I did not push for outright repeal of section 2(c) in Title II of S. 2427. Instead Title II was a compromise proposal designed to meet the concerns expressed by various industry members and others. It was a tough provision—tougher than any other prior proposal to repeal or modify section 2(c), including the Linowes Commission recommendations.

Title II would have repealed section 2(c) unconditionally outside of a railroad's land grant area. Although the National Coal Association initially testified that it had no objection to that portion of my proposal, it later retreated from that position and adopted an

unyielding position in opposition to any meaningful modification of section 2(c). Furthermore, Title II would subject any railroad or railroad-affiliated company which wishes to bid on a federal lease in its land grant area to a number of stringent requirements with respect to leasing and transportation.

As to the conditions for leasing in the land grant areas:

(1) The first is that the railroad or its affiliate must consent to *cooperative leasing,* which means that it must automatically lease its coal adjacent to the federal lease tract to the winning bidder in the lease sale—whoever it is—on terms predetermined and announced before the sale by the Secretary of the Interior. This provision prevents a railroad or its affiliate from withholding its coal in a checkerboard area from development if it is not the successful bidder. It was subject to three minor exceptions about which some concern was expressed by the Administration and I accepted amendments offered by Senator Evans deleting those exceptions. I also accepted an amendment by Senator Evans which prevents a railroad affiliated mining company from imposing overly stringent lease terms on its own coal which might chill bidding on adjacent federal coal.

(2) The second condition involves *data disclosure.* A railroad or its affiliate must disclose all the data it possesses on its own coal adjacent to the federal lease tract to all potential bidders before the lease sale. This removes any possible advantage that the railroad or its affiliate might have and puts all potential bidders in an equal informational basis.

(3) The third condition imposes new federal coal *acreage limitations* on a railroad or its affiliate. Title II provides an additional limitation on the acreage of federal leases a railroad or its affiliate may hold in its checkerboard—a *national* limitation which is one half the acreage permitted to all other coal leasees *in each state,* and, therefore, a small fraction of what all other competitors may hold nationwide. This extends the salutory anti-monopoly objective of the present acreage limitations to railroad land grant areas to a degree that would permit only modest development of federal coal by railroads or their affiliates in their land grant areas. For example, Rocky Mountain Energy testified that it would be eligible for only an additional 9000 acres of federal coal in its extensive land grant area.

With respect to transportation concerns, my amendment included the following safeguards never proposed in the previous section 2(c) debates.

(4) Title II would require full *disclosure of coal supply and transportation contracts.* Before a railroad may ship coal from any federal lease held by it or its affiliate in the railroad's exclusive service area, the railroad or its affiliate must submit to the Secretary of the Interior the supply contract, the transportation contract, and other bids for hauling a competitors' coal. The Secretary must disclose the contracts and bids to a complaining competitor when the railroad's transportation contract for its affiliate's coal and the railroad's bid to haul the competitor's coal are not identical in all material aspects. The competitor can use the disclosed contracts and bids in any litigation it wishes to bring. This provision is designed to provide a coal producer who has lost a coal supply con-

tract with the information necessary to determine whether the railroad has unlawfully discriminated in favor of its affiliate in quotations for rates or conditions of service.

(5) The disclosure provision discussed above was designed to remedy one of the principal complaints of the coal industry opponents to modification of section 2(c), namely that they lacked information necessary to make a prima facie case of discriminatory practices under existing law. During committee consideration of the proposal, however, the industry indicated that it was not satisfied with such disclosure, arguing that the Staggers Act had removed the previous *protection against discriminatory practices* in the Interstate Commerce Act. In response to that argument, Senator Evans offered and I accepted an amendment that extended the protection of the so-called "Grain Shippers' " provision of the Interstate Commerce Act to transactions involving carriage by a railroad of coal produced from a federal lease held by it or an affiliate. This remedy would authorize, *inter alia,* the sanction of voiding an offending transportation contract.

(6) With respect to *additional remedies for possible anticompetitive activities* by a railroad or its mining affiliate, I added an amendment during markup to make it crystal clear that the *lease forfeitrue* provisions of section 27 of the Mineral Leasing Act would be applicable to any such activities. In response to concerns that the treble damages and injunction remedies might somehow not be applicable to transportation by a railroad of coal produced from a federal lease held by its affiliate, I accepted an amendment by Senator Metzenbaum to assure the *applicability of all antitrust remedies* to such transactions.

There can be no argument, except from those few elements of the coal industry which seek to maintain their industry dominance, that this amendment will not improve competition and serve the public. This Nation needs a rational federal coal leasing policy which protects the public interest in the management and development of our resources. The consumers need to be protected. We needed to enact title I to protect the small producers and to continue the ability of other elements of the industry than just Peabody, Consol, Pittsburgh & Midway and NERCO, to compete, lease, and mine. We also need to enact my proposed title II to foster competition and end the insanity that US Steel cannot lease federal coal and then move it on their own feeder lines to their plants. It is time to come into the twentieth century.

In retrospect, I believe that Senator Jackson and I should have pushed harder for reform of section 2(c) in previous years. If we had, the States would now be receiving revenues from the federal tracts which are now in almost permanent bondage to the major coal companies. Seven Administrations—Democrat and Republican, liberal and conservative—every objective review, including the Public Land Law Review Commission, the Department of Justice and the Linowes Commission, and a number of western governors have found section 2(c) to be anticompetitive. Title II is not a windfall for railroads. If anything, with the restrictions contained in this amendment, it penalizes them. Title II will reintroduce competition into the federal coal marketplace and protect the public interest and the needs of the American people. The choice is between

the public and a few large firms which would seek to perpetuate and expand their contol and dominance. I do not intend to give up in my determination that they not be permitted to do so.

JAMES A. MCCLURE.

ADDITIONAL VIEWS OF SENATORS McCLURE, MURKOWSKI, AND HECHT

We have serious reservations about Section 109 of S. 2427. That section was offered and accepted by the Committee. It prohibits the issuance of a federal coal lease to any entity engaged in the extraction or production of coal reserves in a foreign country, and the importation of such reserves into the U.S.

It is our view that this provision is entirely unnecessary. Coal imports into the U.S. in 1985 were a little over 0.2 percent of total domestic production. The Energy Information Administration has predicted that this will grow to no more than 0.5 percent of U.S. domestic production by 1995. Moreover, existing laws, such as the Tariff Act of 1930 and the Trade Act of 1974, provide ample authority for addressing unfair trade practices of a coal supplier importing foreign coal into the U.S. to the detriment of the U.S.

Beyond the question of need for Section 109 lies the profound negative implications of this provision on our trade, energy, and foreign policy.

Section 109 will also impair our domestic energy policy. Some of the leading coal producers in the U.S. will be forced by this provision to choose between going forward with contemplated foreign coal projects or continuing to seek domestic federal coal leases. Should they elect the former, competition for federal leases will be reduced to the detriment of our policy of developing public resources.

Clearly the most serious implications of Section 109 concern our trade policy. The United States is the world's leading exporter of coal. We go to great lengths to convince other countries to buy our coal. This provision could significantly damage our relations with Canada and Colombia—the two countries most likely to import coal into the United States. Currently, the U.S. enjoys a substantial positive trade balance with Colombia. It is extraordinarily difficult under present conditions to persuade these countries, particularly those on the Pacific Rim, to make long-term commitments for the purchase of U.S. coal. This provision will make a difficult situation almost impossible.

We believe that Section 109 is an unnecessary provision that will have very serious negative consequences for U.S. coal trade and for our domestic coal industry as a whole. We strongly urge that this ill-advised provision be deleted from S. 2427.

JAMES A. MCCLURE.
FRANK H. MURKOWSKI.
CHIC HECHT.

ADDITIONAL VIEWS OF SENATORS WARNER, EVANS, JOHNSTON, BUMPERS, FORD, METZENBAUM, AND BRADLEY

We present these additional views relating to the rate of the royalty payment required for Federal coal leases.

We note that S. 2427 provides in section 104 that leases issued prior to August 4, 1976, are, upon the first readjustment after enactment of the Federal Coal Leasing and Utilization Act of 1986, to be readjusted to require payment of a royalty in the amount of not less than 12½ per centum of the value of the coal, as determined by the Secretary, for surface-mined coal and not less than 8 per centum for coal recovered by underground mining.

This provision is intended to set at rest questions which have arisen regarding the application of section 7 of the Mineral Lands Leasing Act of 1920, as amended (MLA). When Congress adopted the Federal Coal Leasing Amendments Act of 1976 (FCLAA), it rewrote this section 7 without any grandfather clause for existing leases and without distinguishing between new leases and existing leases at the time of their next scheduled readjustment. In 1978, Congress amended section 3 of the MLA (30 U.S.C. Sec. 203), at which time our Committee report stated, "All leases would of course be subject to the provisions of the 1976 amendments at the expiration of their original lease term" (S. Rept. No. 95–1169, 95th Cong., 2d Sess. 7). Our amendment of section 3 of the MLA in 1978 itself reflects our intent that the minimum royalties of section 7 apply to all leases at the expiration of their original lease term. We are aware of and in agreement with the Solicitor's opinion (88 I.D. 1003 (1981)) that section 7, as amended in 1976, governs all Federal coal leases and that leases exiting at the time of its passage are to be brought into conformity with its requirements at the time of their first scheduled readjustment after August 4, 1976.

The foregoing notwithstanding, we are aware of the adoption by the secretary of the "self-imposition of the sanctions of waiver" (44 Fed. Reg. 42602 (July 19, 1979)) where a coal lessee was not given notice of intent to readjust prior to the anniversary date of its lease (43 C.F.R. 3451.1(b)). While many pre-FCLAA leases have been readjusted and brought into conformity with FCLAA, we are aware that in some instances there has been a "waiver" under the regulations as construed and applied by the Secretary. These regulations are premised on Interior's interpretation that section 7, as amended, requires affirmative Department action to readjust existing leases to the higher royalty rates (Letter of November 25, 1985, from Director Robert F. Burford, Bureau of Land Management, to Senator J. Bennett Johnston, Committee on Energy and Natural Resources, at p. 2). We believe that this interpretation is wrong and that the higher minimum royalty rates are statutorily-mandated. For this reason, it is our view that the case, *FMC Wyoming Corporation* v. *Watt,* 587 F. Supp. 1545 (D. Wyo. 1984), *appeal pending,*

No. 84-2175 (10th Cir., filed August 23, 1984), was decided erroneously.

The Committee has sought to address the problems of "notice" and "waiver" by providing expressly that in the future, Interior will not be required to initiate any action to effectuate a readjustment, and that pre-existing leases "shall be readjusted automatically by operation of law" to the statutory rates. It is our view that this is also currently the law.

In response to such erroneous "waivers" of royalty readjustments, the bill includes section 108, which provides that a lessee holding a coal lease for which readjustment was waived after August 4, 1976, and prior to the date of enactment, may not be issued or acquire a Federal coal lease unless it agrees to readjustment of the coal lease for which readjustment was waived.

The Committee considered, but did not include in its recommendation, an amendment which would have permitted lower royalty rates for certain categories of pre-1976 leases. The Committee was wise in declining to include this amendment. Allowing lower royalty rates for certain categories of leases, as contemplated by the amendment, would have led to market distortions, and would have had anti-competitive effects by granting certain leases advantageous royalty rates. In addition, the amendment would have resulted, in all likelihood, in significantly lower royalty revenues for the Federal government and the states.

Similarily, the Committee did not adopt the royalty phase-in concept, included in H.R. 1934, as reported by the House Committee on Interior and Insular Affairs (H. Rept. No. 99-628, 99th Cong., 2d Sess.). That provision would allow the 12½ percent royalty rates to be phased in over a period of ten years. Our Committee was wise in not adopting this approach, since it, too, would lead to market distortions and have anti-competitive effects by granting certain leases advantageous royalty rates. Furthermore, the Congressional Budget Office estimated that the phase-in provision would be costly, resulting in a loss of revenues to each the Federal government and the states of $50 million in 1987, totalling $250 million over the 1987-1991 period. (H. Rept. No. 99-628, at 20.)

Finally, we believe the Committee was correct in taking the actions it did with respect to section 108 of S. 2427, as introduced. Section 108 would have broadened the Secretary's authority to reduce royalty rates under section 39 of the MLA. We believe that sufficient authority to grant royalty reductions where warranted already exists under current law. The Secretary must be mindful in exercising such authority that market distortions could be created and anti-competitive effects could result if lower royalty rates are selectively granted where circumstances do not so warrant.

JOHN WARNER.
DANIEL J. EVANS.
J. BENNETT JOHNSTON.
DALE BUMPERS.
WENDELL FORD.
HOWARD M. METZENBAUM.
BILL BRADLEY.

ADDITIONAL VIEWS OF SENATOR JOHNSTON

For several years, I have been anxious to address several matters relating to the Federal coal leasing program which are incorporated in S. 2427.

I have been particularly concerned about the fact that under existing law, entities affiliated with companies holding pre-1976 Federal coal leases not producing in commercial quantities on August 4, 1986, will be ineligible to be issued *any* mineral lease under the Mineral Lands Leasing Act of 1920 (MLA), as amended. Oil companies with coal affiliates holding noncompliance leases will be ineligible to obtain new oil and gas leases under the MLA. Given the current state of both the coal and oil industries, this is not a result that I believe we want to reach. I therefore strongly support the provision limiting the prohibition on issuance of new leases to leases for coal only.

The concept of limiting the prohibition to coal leases only was contained in my bill, S. 372, introduced on January 31, 1985. I am pleased that the Committee included this concept in its recommendation, as well as several others contained in my original bill:

Turnback as an option to avoid the section 2(a)(2)(A) prohibition;

Requirements relating to Secretarial approval of relinquishment;

Prohibition on disclosure of information relating to lease value;

Allowing the payment of advance royalties for years eleven through twenty as a means of satisfying the condition of diligent development;

Making the definition of certain terms statutory;

Requiring the Comptroller General to monitor the Federal coal leasing program and report his findings to Congress;

Requiring the submission of certain financial information relating to transfer of interests or operating rights in federal coal leases.

Special note should be made regarding one provision in section 3(a) of my bill, S. 372, which was subsequently included in section 104 of Senator McClure's bill, S. 2427. The specific provision states as follows:

> With respect to a lease issued prior to August 4, 1976, upon the effective date of the first readjustment after the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, the amount of the royalty required to be paid under such lease shall be readjusted automatically by operation of law to a rate of not less than 12.5 per centum of the value of coal for surface-mined coal, and to a rate of

not less than 8 per centum in the case of coal recovered by underground mining operations. * * *

This provision was included in my bill to clarify the requirement of existing law that pre-1976 leases are, upon the first readjustment subsequent to the enactment of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), subject to a 12.5 percent or 8 percent royalty rate, depending on the method of mining. FCLAA, by its plain language, statutorily mandated these specific minimum royalty rates. Because these rates are a statutory requirement, they cannot be waived administratively. A lessee's only recourse would be to seek a royalty reduction pursuant to section 39 of the MLA. It is therefore my view that the District Court in *FMC Wyoming Corporation* v. *Watt,* 587 F. Supp. 1545 (D. Wyo. 1984), *appeal pending,* No. 84-2175 (10th Cir., filed August 23, 1984), erred as a matter of law in its ruling.

Several other provisions of the bill serve to make more meaningful the diligent development requirements of the MLA. S. 2427 would block the assignment of coal leases to lessees not complying with section 2(a)(2)(A). Under an amendment offered by Senator Metzenbaum, readjustment of noncompliance leases is a prerequisite to exercising an option for relief from the section 2(a)(2)(A) prohibition. An amendment offered by Senator Bingaman prevents the section 2(a)(2)(A) clock from restarting upon assignment. In addition, S. 2427 would require the readjustment, in accordance with the requirements of section 7, of leases being assigned. S. 2427 also makes readjustment of all leases held by a lessee for which readjustment was "waived" by the Department a prerequisite to that lessee obtaining coal leases.

Finally, I applaud the Committee's action in voting to strike Title II of S. 2427. That Title would have modified section 2(c) of the MLA, which currently prohibits a common carrier railroad or its affiliate from being given or holding a Federal coal lease, with certain limited exceptions.

I oppose the repeal or modification of section 2(c). Railroads have an inherent competitive advantage in the leasing process, given the pattern of land ownership resulting from the land grants to railroads in the 1800's. Also, railroads have an inherent competitive advantage in coal transportation. Of particular concern to me is the problem of the captive shipper and the lack of competition in the transportation of coal. Passage of the Staggers Rail Act of 1980 seems only to have exacerbated the problem. Reform of the Staggers Act and passage of legislation to provide eminent domain authority for coal slurry pipelines are necessary steps in addressing this problem.

Any modification of section 2(c) must be coupled with a guarantee that a railroad would not have a competitive advantage in coal production and marketing due to its dominance in coal transportation. Title II of S. 2427 failed to do so.

J. BENNETT JOHNSTON.

MINORITY VIEWS OF SENATOR METZENBAUM

I submit these minority views because I believe this bill would unwisely and unnecessarily reverse a decade-old congressional policy against speculation in federal coal reserves in order to benefit a few large corporate coal lessees. There is no clear public interest justification for enacting this bill, or any similar bill. These objections remain true despite the fact that the committee made some significant improvements in S. 2427 during its lengthy consideration of the bill, including the addition of several amendments which I offered.

In the interest of allowing a small number of energy corporations to hold on to billions of tons of federal coal which they have failed to develop in a timely manner, this bill would revoke a bipartisan congressional coal leasing policy established over President Ford's veto a decade ago.

There is no clear public interest served by abandoning this policy. In the decade following the enactment of the Federal Coal Leasing Amendments Act of 1976, coal production from our nation's public lands has accelerated from 33 million tons per year to over 160 million tons per year. Royalties paid to federal and state treasuries have increased even faster, from $6 million in 1976 to over $100 million in 1985. Coal supplies are plentiful, and competition among coal producers has acted to hold consumer electricity costs down.

The federal coal management program has been highly successful in encouraging production of federal coal, and also in encouraging the sale or relinquishment on non-producing leases. Still, the authors of S. 2427 are intent on "fixing" the program. In particular, S. 2427 would drastically weaken the ability of the federal government to encourage timely ("diligent") development of the public's coal resources.

In 1976, Congress, confronted with over 500 existing coal leases, only a tiny fraction of which were producing any coal, enacted Section 2(a)(2)(A) of the Mineral Leasing Act, which provides that, at the end of ten years, any lessee which holds and has held for ten years a federal coal lease which is not "producing in commercial quantities" will be barred from obtaining any other federal mineral leases unless and until the lessee (1) sells the non-producing lease; (2) relinquishes it to the government; or (3) brings it into production.

Today, many old leases have been brought into production. However, there are still more than 200, covering over 7 billion tons of public coal, which analysts expect will fail to meet the diligence requirements of the law by the end of this year. Because most of these leases are held by diversified energy corporations which have interests in oil and gas and other federal minerals, the diligence

mechanism of Section 2(a)(2)(A) has been particularly effective in discouraging continued speculation by federal coal lessees.

Under the present law, many non-producing coal leases would be relinquished to the government before January 1, 1987, the date on which penalties for companies in violation of Section 2(a)(2)(A) would take effect. In many cases, such relinquishments would provide a public benefit. Because these leases were issued prior to the enactment of the Federal Land Policy Management Act (FLPMA) and the Surface Mining Control and Reclamation Act (SMCRA), they were not subject to the environmental scrutiny which applies to new leases. Many of them would be environmental disasters if they were ever developed. But they would also be financial disasters for the government, because they were issued at royalty rates which are absurdly low by today's standards. If current law remains, relinquished leases which are marketable could be re-leased by the government with royalties and bonuses which more adequately reflect fair market value for the public.

In fact, many companies have already taken action in a good faith effort to comply with the law. Peabody and Texaco have recently relinquished many of their unproductive leases, and other leases have been assigned to companies more able to develop them in a timely manner. But under S. 2427, it is safe to say that few, if any more leases will be relinquished.

The bill would restrict the penalty for holding undeveloped federal coal leases to a bar on obtaining new competitive federal coal only. The prohibition on obtaining oil and gas leases is removed. This is significant because many of the non-diligent leases are owned by subsidiaries of major oil and gas producers. These firms simply have little interest in obtaining additional federal coal. Without the oil and gas penalty, they have virtually no incentive to produce coal from existing leases or relinquish these leases.

At the same time, many of the coal companies that are the most audacious violators of the diligence provisions of current law are also unaffected by the revised penalty. This is because they already own so much coal that a ban on new leases is meaningless. For example, Consolidation Coal Co. holds over a billion tons of developed federal coal in 31 pre-1976 leases. It simply has no need to seek new coal leases.

The coal-only ban is rendered even weaker by provisions of the bill that allow companies to evade it entirely. Under S. 2427, companies could continue to obtain leases if they pay a very modest holding fee or show that they have made a significant expenditure towards developing the lease.

In short, the diligence mechanism established by Congress a mere ten years ago is substantially weakened by this legislation.

I oppose this bill because I do not believe there is any good public policy reason to give a handful of major oil and coal companies a gigantic and unjustified windfall at the expense of the environment and the taxpayers of this country.

HOWARD M. METZENBAUM.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the Federal Coal Leasing and Utilization Act of 1986, as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ACT OF FEBRUARY 25, 1920

(41 Stat. 437, as amended)

* * * * * * *

COAL

SEC. 2. (a)(1)*(A)* The Secretary of the Interior is authorized to divide any lands subject to this Act which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding: *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to title V of the Federal Land Policy and Management Act of 1976. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary

to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is hereby authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants.

(B) No lessee holding a coal lease which was eligible for readjustment after August 4, 1976 and prior to the date of enactment of the Federal Coal Leasing and Utilization Act of 1986 which was not readjusted to include the provisions of section 7 of the Act as in effect prior to the enactment of the Federal Coal Leasing and Utilization Act of 1986 may be issued a coal lease or acquire a coal lease by assignment unless all coal leases which the lessee holds and which were eligible for readjustment and which were not readjusted are readjusted in accordance with the provisions of this Act as amended by the Federal Coal Leasing and Utilization Act of 1986 prior to the date of issuance or assignment of the coal lease.

(2)[(A) The Secretary shall not issue a lease or leases under the terms of this Act to any person, association, corporation, or any subsidiary, affilate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 7(b) of this Act, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to the date of enactment of the Federal Coal Leasing Amendments Act of 1975 shall not be counted.] *(A)(i) The Secretary shall not issue a competitive coal lease or competitive coal leases under the terms of this Act, nor may he consent to the assignment of any such lease or leases, to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued prior to August 4, 1976, by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided in sections 7(a) and 7(c) of this Act, producing coal from the lease deposits in commercial quantities or is not complying with the requirements of diligent development set forth in Section 7(b) of this Act. In computing the ten-year period referred to in the preceding sentence, periods of time prior to August 4, 1976, shall not be counted.*

(ii) The prohibition in subparagraph (A)(i) shall not apply if such entity agrees to relinquish, and the Secretary has accepted such relinquishment of, a noncompliance coal lease or leases issued pursuant to this Act containing estimated recoverable coal reserves equivalent to three times the estimated recoverable coal reserves from the lease or leases being issued. To the extent coal reserves relinquished under this subparagraph exceed three times the estimated coal reserves to be acquired, the entity with the approval of the Secretary may, for the purposes of complying with this section, apply the amount of excess reserves toward future competitive lease sales."

(iii) The prohibition in subparagraph (A)(i) shall not apply to any entity which has made a substantial investment in each noncompliance lease issued prior to August 4, 1976.

(iv) The prohibition in subparagraph (A)(i) shall not apply to any entity holding a noncompliance lease or leases which has agreed within 6 months from the date of enactment of the Federal Coal Leasing and Utilization Act of 1986 or from the date on which each such noncompliance lease became a noncompliance lease, whichever is later, to pay an additional annual rental on each such noncompliance lease, on which substantial investment has not been made, of one-half (0.5) cent per ton of recoverable coal reserves. The prohibition shall also not apply if, prior to either submitting a bid for a competitive coal lease or acquiring such a lease by assignment, such entity agrees to pay an additional annual rental of one cent per ton of recoverable coal reserves on all noncompliance leases, on which substantial investment has not been made, held by such entity. Payments under this paragraph shall be made retroactive to the enactment of the Federal Coal Leasing and Utilization Act of 1986 or the date on which each lease held by such entity became a noncompliance lease, whichever is later.

(v) Notwithstanding fulfillment of the conditions set forth in subparagraphs (A)(ii), (A)(iii), or (A)(iv), an entity otherwise subject to the prohibition in subparagraph (A)(i) shall be subject to such prohibition if the entity holds any noncompliance lease or leases not readjusted after the date of enactment of the Federal Coal Leasing Amendments Act of 1976, unless such entity agrees within 60 days after the date on which the entity becomes ineligible to receive new coal leases by reason of the prohibition contained in Section 2(a)(2)(A)(i) of this Act that such noncompliance lease or leases be readjusted immediately by operation of law.

(vi) For the purposes of this section, the term "noncompliance lease" means a coal lease issued prior to August 4, 1976, which has been held by the lessee for a period of ten years and has not produced coal from the lease deposits in commercial quantities. For the purpose of this section the term "competitive coal lease" shall not include a lease issued pursuant to the emergency leasing provision contained in section 3425.1-4 of title 43 of the Code of Federal Regulations as in effect on May 13, 1986.

(vii) Estimation of recoverable reserves for the purposes of this section shall be based on the estimate of the Secretary of recoverable coal reserves without regard to quality or location.

(viii) Notwithstanding any other provision of this Act, the Secretary shall accept the relinquishment by the lessee of any coal lease or leases issued prior to August 4, 1976, where there has not been significant surface disturbance.

(ix) Any entity holding a lease or leases issued prior to August 4, 1976, by the United States to coal deposits shall not be subject to the prohibition in subparagraph (A)(i) due to holding such lease where the Secretary determines that all recoverable reserves in such lease have been mined out and the lessee holds such lease solely for the purposes of complying with the applicable requirements relating to reclamation set forth in such lease or in State and Federal law.

(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes

to issue under this Act shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this Act before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the day the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall on the basis of such statement, reconsider the issuance of such lease.

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided,* That where the Secretary of the Interior finds that because the non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining oper-

ations and the amount of such coal which is recoverable by surface mining operations.

(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services. Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operation plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Public hearings in the area shall be held by the Secretary prior to the lease sale.

(D) No lease sale shall be held until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 1857 and following).

(4)(A) Notwithstanding any other provisions of law as to information that may be disclosed, neither the Secretary nor any other officer, employee, contractor or agent of the Department of the Interior or bureau of agency thereof, before lease issuance shall disclose to anyone who is not an employee, contractor or agent of the Department of the Interior or bureau or agency thereof data relating to presale appraisal value and the identification of specific comparable sales data, if any, used by the Department in estimating coal tract value. This provision against disclosure shall not apply to descriptive data used by potential bidders to prepare bids such as tonnage, BTU's stripping rates, or, after a lease is issued, the fair market value estimate.

(B) Any Federal employee, contractor or agent of the Department, including the Secretary, who willfully violates subsection (a)(4)(A) shall be guilty of a crime and subject to the penalties set forth in section 1905 of title 18, United States Code.

(5) The Secretary shall not issue a competitive coal lease or leases under the terms of this section to any person, association, or corporation that is a subsidiary of, affiliated with, or controlled by or under common control with a person, association, or corporation engaged in the extraction or production of coal reserves in a foreign country, and the importation of such reserves into the United States.

(b)(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this Act without such an exploration license. Each exploration license shall be for a term of not more than two years and shall be subject to a reasonable fee. An exploration license shall confer no right to a lease under this Act. The issuance of ex-

ploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations and to such persons as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

(2) A license may not cause substantial disturbance to the natural land surface. He may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this Act included under his license for analysis and study. A licensee must comply with all applicable rules and regulations of the Federal agency having jurisdiction over the surface of the lands subject to this Act. Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nominal interests in those lands.

(3) The license shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentially of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

(4) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this Act without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty under this subsection shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation.

(c) No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisons of this Act for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporation; and no such company or corporation shall receive or hold under permit or lease more than ten thousand two hundred and forty acres in the aggregate nor more than one permit or lease for each two hundred miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam. Nothing in this section shall preclude such a railroad of less than two hundred miles in length from se-

curing one permit or lease thereunder but no railroad shall hold a permit or lease for lands in any State in which it does not operate main or branch lines.

(d)(1) The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into a logical mining unit. Such consolidiation may only take place after a public hearing, if requested by any person whose interest is or may be adversely affected. A logical mining unit is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resoruces. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous *(except that noncontiguous areas within reasonable proximity of each other and which are determined by the Secretary to be incorporated into a single operation under the effective control of a single operator may also be included in a logical mining unit).*

(2) After the Secretary has approved the establishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the reserves of the entire unit will be mined within a period established by the Secretary [which shall not be more than forty years].

(3) In approving a logical mining unit, the Secretary may provide, among other things, that (i) diligent development, continuous operation, and production on any Federal lease or non-Federal land in the logical mining unit shall be construed as occurring on all Federal leases in that logical mining unit, and (ii) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties.

(4) The Secretary may amend the provision of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit.

(5) Leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

(6) By regulation the Secretary may require a lessee under this Act to form a logical mining unit, and may provide for determination of participating acreage within a unit.

(7) No logical mining unit shall be approved by the Secretary if [the total acreage (both Federal and non-Federal)] *the total Federal acreage* of the unit would exceed twenty-five thousand acres.

(8) Nothing in this section shall be construed to waive the acreage limitations for coal leases contained in section 27(a) of the Mineral Lands Leasing Act (30 U.S.C. 184(a)).

* * * * * * *

[SEC. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from the lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended.

[(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of ten years.

[(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.]

GENERAL PROVISIONS

SEC. 7. (a) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, as provided for in subsections 7(b) and 7(c) of this Act, except where operations under the lease are interrupted by strikes, the elements, or

casualties not attributable to the lessee or where the Secretary determines that all recoverable reserves in such lease have been mined out and the lessee holds such lease solely for the purposes of complying with the applicable requirements relating to reclamation set forth in such lease or in state or federal law. A coal lease shall be for a term of twenty years and for so long thereafter as the condition of continued operation is met. The Secretary shall by regulations prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12.5 per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations, or from special bituminous coal mines which meet the requirements of Section 527(a) (1) to (4) or Section 527(b) of Public Law 95-87 (91 Stat. 445, 513-514). The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of the primary term of the lease of twenty years and at the end of each ten-year period thereafter if the lease is extended. With respect to a lease issued prior to August 4, 1976, upon the effective date of the first readjustment after the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, the amount of the royalty required to be paid under such lease shall be readjusted automatically by operation of law to a rate of not less than 12.5 per centum of the value of coal for surface mined coal, and to a rate of not less than 8 per centum in the case of coal recovered by underground mining operations or in the case of special bituminous coal mines which meet the requirements of Section 527(a) (1) to (4) or Section 527(b) of Public Law 95-87 (91 Stat. 445, 513-514). In the case of a lease issued before August 4, 1976, for that portion of the lease from which income is derived from a supply agreement with any nonprofit rural electric cooperative association, royalty or rental adjustments (if any) for each readjustment period shall be made on a reasonable basis and upon a complete evaluation of the facts and circumstances involved in each individual lease; such factors shall include, but are not limited to, the impact of any proposed increases upon wholesale electric rates of the affected nonprofit rural electric cooperative, the nature of the supply agreement with such cooperative, mining costs and other competitive and marketability factors, the relationship of the increases to historical royalties and rentals, and other relevant facts and circumstances.

DILIGENT DEVELOPMENT

(b)(1) A lease which is not producing coal in commercial quantities at the end of ten years shall be terminated unless the lessee has either made a substantial investment in such lease or chooses to extend the lease beyond the tenth lease year through the annual payment of diligent development advance royalties based on the production royalty which would otherwise be paid and assessed on assumed annual production of 0.3 per centum of total recoverable reserves.

(2) A lease which is not producing coal in commercial quantities at the end of fifteeen years shall be terminated unless the lessee has made a substantial investment in such lease and chooses to extend the lease beyond the fifteenth year, but not beyond the twentieth year, through the annual payment of diligent development advance royalties based on the production royalty which would otherwise be paid and assessed on assumed annual production of 0.7 per centum of total recoverable reserves.

(3) The amount of any production royalty paid for any year shall be reduced (but not below the amount payable on one per centum of the recoverable coal reserves under such lease or within such logical mining unit) by the amount of any diligent development advance royalty paid under such lease to the extent that such diligent development advance royalties have not been used to reduce production royalties for a prior year. No diligent development advance royalty paid during the initial twenty-year term of a lease may be used to reduce a production royalty after the twentieth year.

CONTINUED OPERATION

(c) The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of continued operation advance royalties. Such continued operation advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which continued operation advance royalties may be accepted in lieu of the condition of continued operation may not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below zero) by the amount of any continued operation advance royalties paid under such lease to the extent that such continued operation advance royalties have not been used to reduce production royalties for a prior year. No continued operation advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept continued operation advance royalties in lieu of the requirement of continued operation.

OPERATION AND RECLAMATION PLAN

(d) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal Agency, that other agency must consent to the terms of such approval.

DEFINITIONS

(e) For the purposes of the provisions relating to leasing of deposits of coal under this Act the term—

(1) "commercial quantities" means one per centum of the recoverable coal reserves under lease or within a logical mining unit (LMU);

(2) "diligent development" means the production of recoverable coal reserves in commercial quantities;

(3) "continued operation" means the production of not less than commercial quantities of recoverable coal reserves in each of the first two years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable reserves each year thereafter, computed on a three-year basis consisting of the year in question and the two preceding years; and

(4) "substantial investment" means an expenditure of not less than five cents ($.05) per ton of recoverable coal reserves for exploration or planning under the lease or for development and construction of operating facilities in the mine plan area for mining on the lease, or any combination of the foregoing, together with submission of an application for approval of a permit to mine, issued pursuant to Section 506 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1256), containing information addressing each application requirement of the applicable regulatory program administered pursuant to the Surface Mining Control and Reclamation Act of 1977 and containing all information necessary to initiate processing and public review.

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SEC. 8B. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the leasing and production of coal lands subject to this Act during such fiscal year; a summary of management, supervision, and enforcement activities; and recommendations to the Congress for improvements in management, environmental safeguards, and amount of production in leasing and mining operations on coal lands subject to this Act. Each submission shall also contain a report by the Attorney General of the United States on competition in the coal and energy industries, including an analysis of whether the antitrust provisions of this Act and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry.

SEC. 8C. The Comptroller General of the General Accounting Office shall monitor the management, supervision, and enforcement relating to the leasing and production of coal on coal lands subject to this Act for a period of five years after the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, and shall report the Comptroller General's findings with respect to these activities in a semiannual report to the Congress beginning six months after the date of enactment of the Federal Coal Leasing and Utilization Act of 1986.

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SEC. 30. That no lease issued under the authority of this Act shall be assigned or sublet, except with the consent of the Secretary of the Interior. *Within one hundred and eighty days of enactment of the Federal Coal Leasing and Utilization Act of 1986, the*

Secretary of the Interior shall promulgate regulations which require, prior to his approval of any transfer of a record title interest or of operating rights in a lease, that the transferor submit to the Secretary of the Interior a financial document describing the consideration or value paid or promised for the transfer. Such regulations shall set forth both the extent and type of the information required to be filed in such financial document. The Secretary shall not consent to the assignment of any coal lease issued prior to August 4, 1976 unless such lease has been readjusted pursuant to section 7 of this Act after August 4, 1976 or unless the assignee agrees that such lease shall be readjusted in accordance with section 7 of this Act prior to the effective date of the assignment. After the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, the Secretary shall not issue or authorize the assignment of a competitive coal lease or leases under the terms of this Act to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, which holds any coal lease issued by the United States prior to August 4, 1976, and which the entity acquired by assignment after the date of enactment of the Federal Coal Leasing and Utilization Act of 1986, when such entity is not, except as provided in sections 7(a) and 7(c) of this Act, producing coal in commercial quantities from such lease, or is not complying with the requirements of diligent development set forth in Section 7(b) of this Act, or is not fulfilling the conditions set forth in subparagraphs (ii), (iii), (iv), (v) or (ix) of Section 2(a)(2)(A) of this Act. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare: *Provided,* That none of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

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